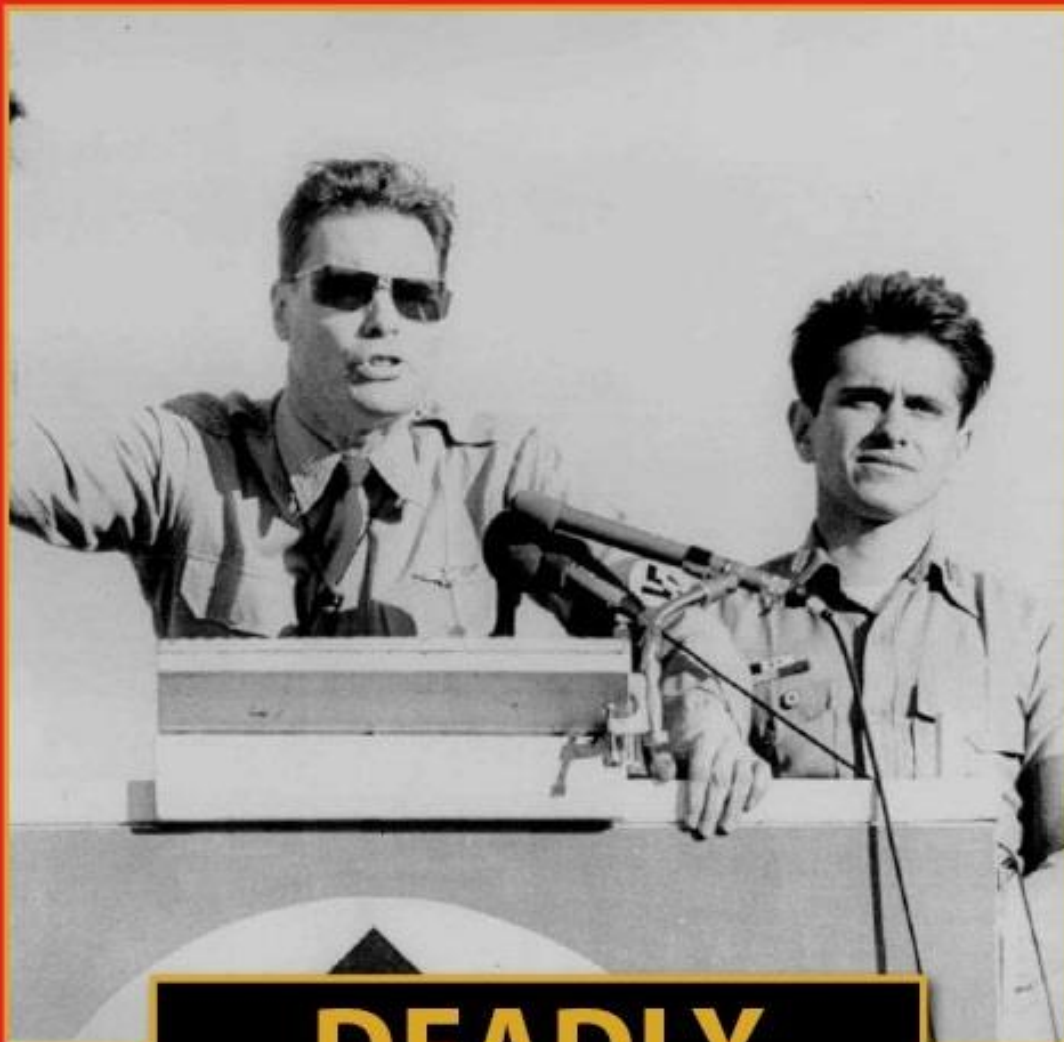




DEADLY FRIENDSHIP

John Patler and the murder
of George Lincoln Rockwell
Volume 1

James Pontolillo

Deadly Friendship:

***John Patler
and the murder of
George Lincoln Rockwell***

Volume 1

Edited by James Pontolillo

Upton Hill Publishers
Arlington, VA

Upton Hill Publishers
6150 Wilson Boulevard
Arlington, Virginia 22205

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Designed and typeset in Times New Roman.

Cover Photo: American Nazi Party Commander George Lincoln Rockwell, flanked by his aide-de-camp John C. Patler, speaks at a March 1966 rally in Washington, DC.

Dedicated to the blessed memory of
my dear wife Julia Jo,
whose feet now tread the lost aeons.

*Being prepared to die is one of the
great secrets of living.*

George Lincoln Rockwell

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Preface

On January 1, 1967, George Lincoln Rockwell, founder and Commander of the Arlington, Virginia-based American Nazi Party, announced that it had been officially renamed the National Socialist White People's Party (NSWPP) and that its slogan had changed from "Sieg Heil" to "White Power." The aim was to stress the organization's new focus on a universal white supremacy and its move away from an exclusively pro-Germanic orientation. In the middle of June, the NSWPP held a national conference in Arlington aimed at reorganizing its leadership and "charting a new course of professionalism." A week later the first attempt was made on Rockwell's life. Returning from shopping, he drove into the party headquarters' driveway at 6150 Wilson Boulevard and found it blocked by a felled tree. As a trooper got out of the car to clear the obstruction, a gunman fired two shots at Rockwell from a nearby patch of woods. Leaping from his car, Rockwell pursued the unidentified figure down Wilson Boulevard but the would-be assassin escaped. On June 30, Rockwell petitioned the Arlington County Circuit Court for a gun permit; no action was taken on this request. Rockwell spent most of that summer working on the manuscript of his new book, *White Power*.

A few minutes before noon on August 25, George Lincoln Rockwell entered the Econowash laundromat at the Dominion Hills Shopping Center in the 6000 block of Wilson Boulevard just down the street from NSWPP headquarters. Wearing a white short-sleeve shirt, dark grey slacks, and dark shoes, he appeared to be an ordinary businessman. Despite his local notoriety, no one appeared to recognize Rockwell. He chatted amiably with laundromat operator Ruby Pierce and several fellow customers while starting up his two loads of wash. After commenting "I think that I forgot my bleach" or something to that effect, Rockwell headed out the door.

He returned to his 1958 Chevrolet and began backing out of the parking space in order to return to party headquarters, just up the street. Shopping center patrons suddenly heard hurried footsteps on the tar roof above them and then gunshots rang out. Two bullets smashed through the Chevrolet's windshield and fragmented, spraying Rockwell in a shower of metal and glass. His Chevrolet slowly rolled backwards into a parked car. A mortally-wounded Rockwell staggered out of the front passenger's side door and momentarily pointed toward the shopping center roof before collapsing onto the pavement. A spilled carton of *Ivory Snow* detergent and a copy of the *New York Daily News* lay beside him.

The gunman ran along the shopping center roof and jumped to the ground in the rear. A shop owner and customer briefly gave chase, but were unable to get a clear look at the fleeing figure. Other customers called the Arlington County police department and checked Rockwell for a pulse. He had none; one of the four bullet fragments that struck Rockwell had ripped through several major arteries just above his heart. The internal bleeding was so heavy that he was dead in 2-3 minutes. A short time later at a nearby bus stop, John C. Patler – an estranged former member of Rockwell’s organization – was arrested as the suspected killer by a passing patrolman familiar with the Arlington Nazis. Later that day, after hearing news of his son’s death, Rockwell’s 78-year-old father commented laconically, “I am not surprised at all. I’ve expected it for quite some time.”

Considering how he spent the last decade of his life it would have been surprising if George Lincoln Rockwell had exited this world quietly. Matthias Koehl, Rockwell’s executor and the nominal number two man in the NSWPP, quickly moved to establish legal control over his body and all organizational assets. Although Rockwell’s parents wanted a quiet private burial in Maine for him, they did not feel up to a public fight with Koehl and the NSWPP over their son’s body. On August 27, an NSWPP spokesman reported that Federal officials had given verbal approval to a planned military burial of Rockwell at Culpeper (Virginia) National Cemetery, which was his right as an honorably discharged veteran of the U.S. Armed Forces.

On August 29, several dozen NSWPP troopers and approximately 100 party supporters formed a procession and drove the 65 miles from Arlington to Culpeper. At the cemetery gates they were met by General Carl C. Turner and 60 military policemen who had been rushed in by helicopter from the Pentagon to enforce the U.S. Army’s burial protocol. No mourners bearing National Socialist insignia would be allowed into the cemetery. The NSWPP troopers’ refusal to enter the cemetery ground without their regalia led to a day-long standoff. They unsuccessfully tried to force their way into the cemetery on three separate occasions. Arrests were made. With daylight fading, General Turner declared that Rockwell could not be buried until the NSWPP made a new application to the Pentagon and agreed to follow protocol.

The NSWPP and its supporters returned to Arlington with Rockwell’s body. He was cremated the next day, and a memorial service was held that afternoon at party headquarters. On February 8, 1968, the NSWPP filed suit to obtain a burial with National Socialist honors for Rockwell’s remains at any National Cemetery. In November 1968, a fundraising letter (“Martyr’s Ashes: The Ideal National Socialist Yuletide Gift”) bearing Koehl’s signature was sent to supporters offering small amounts of Rockwell’s ashes for

monetary donations. Koehl denounced the letter as a forgery and denied that the NSWPP was behind the tasteless fundraising scheme. On March 15, 1969, a federal district judge upheld the Army Secretary's ruling that Rockwell was ineligible for burial in a national cemetery due to his political activism. Rockwell's ashes were then placed in a decorative urn and remained in the possession of his political heir Matthias Koehl. In 1984 Koehl and the NSWPP departed Arlington and resurfaced to continue their activism as the New Order in New Berlin, Wisconsin. After Koehl's death in October 2014, Rockwell's ashes and those of post-war National Socialist philosopher Savitri Devi were passed on to other members of the American National Socialist community for continued safekeeping.

The controversy after Rockwell's death wasn't limited to the disposition of his remains. It soon spilled over into the trial of his alleged murderer. Following psychiatric evaluation, John Patler was judged competent to stand trial. Unsurprisingly, he pleaded not guilty at his preliminary hearing, but on September 29, 1967, Patler was bound over by a grand jury on the charge of first-degree homicide. His trial began on November 27 amid tight security at the Arlington County Courthouse. On December 15, Patler was found guilty and released on bond to await sentencing. On February 23, 1968, Patler was sentenced to 20 years in prison – at that time the least punishment possible for a first-degree homicide conviction. The Virginia Circuit Court postponed imprisonment pending his appeal.

It was apparent to those observing the trial that the case against Patler was a weak and purely circumstantial one; even the presiding judge later expressed surprise at the jury's guilty verdict. The prosecution failed to conclusively link Patler to any of the physical evidence, was unable to place him at the crime scene and did not present a clear motive for the crime. His lawyers filed a 66-page petition asking the Virginia Supreme Court of Appeals to overturn the guilty verdict based on 30 separate arguments. Perhaps the most telling points were that only people in the Nazi headquarters knew that Rockwell was going to the shopping center where he was shot and that Rockwell had been gone for only for eight or ten minutes before the shooting occurred. By the summer of 1968, the NSWPP had disintegrated and many former members suspected either the current leadership under Matthias Koehl or other elements within the party of having murdered Rockwell, either with or without the complicity of Patler. Flyers appeared throughout Arlington offering a \$5,000 reward for information leading to the arrest and conviction of Koehl for Rockwell's murder. To further complicate matters, on September 10, 1969, an Arlington Circuit Court jury awarded Patler \$15,000 in compensatory and punitive damages from NSWPP member Robert A. Lloyd for lying under oath. At the murder trial, Lloyd had testified that Patler had stolen from him the gun used to kill Rockwell. Additionally, an attempt was made on the life of a defense witness who placed the murder weapon not in Patler's possession, but at NSWPP headquarters.

Patler spent most of 1970 free on bond and waiting for the results of his appeal. He garnered additional headlines when he began publishing a Spanish-language newspaper that championed the cause of Central American immigrants to the United States. On November 30, 1970, the Virginia Supreme Court upheld Patler's conviction and 20-year sentence for murdering Rockwell and ordered him to begin serving his sentence. On May 16, 1972, the U.S. Supreme Court unanimously rejected Patler's appeal based on claims of witness contamination. In late August 1975, Patler was paroled for the first time from the Pulaski correctional unit after serving 6 years of his 20-year sentence. The following summer, however, he violated the terms of his parole (possession of marijuana and participation in an orgy) and was returned to prison for an additional six years. On December 30, 1977 Patler petitioned the Henry County Circuit Court to change his surname back to its original form, Patsalos. He claimed to have seen the error of his ways and wished to return to his pre-American Nazi Party identity. On October 6, 1978, Patler was paroled after serving approximately 8½ years of his 20-year sentence. He completed his parole in Virginia and then returned home to the New York City area where he has lived a quiet life under his original surname of Patsalos. The family name earned additional ill-repute in 1996 when his younger brother Christ George Patsalos (aka C. George Sparta) was found guilty of murdering his girlfriend Ava Marie DeHart in 1982 and hiding her body in an Orange County (Virginia) well. The younger Patsalos was sentenced to life without parole and died in prison on January 24, 2006.

* * * * *

To this day, opinion remains divided among National Socialists regarding the exact circumstances of George Lincoln Rockwell's death on August 25, 1967. Was John Patler a lone gunman fueled solely by jealous passions committing a *murder* as the prosecution had successfully argued at trial? Or had rogue elements of the NSWPP, with or without Patler's involvement, *assassinated* Rockwell in furtherance of a specific political agenda as others have alleged? Patler, for his part, consistently maintained his innocence over the years. Simonelli (1999, pp. 131-140) provided an excellent synthesis of the main theories concerning the various motives and possible players in Rockwell's demise. Unfortunately, the only two published accounts of the Patler trial itself (Schmaltz, 1999, 2013; Simonelli, 1999) lack any real substance and largely reproduced the limited details to be found in the newspaper coverage at the time. In the latest edition of his Rockwell biography, Schmaltz (2013) included a new Afterword by John Patler's son Nicholas which contains an implied acceptance of the general idea that his father was Rockwell's killer. One thing though is clear: the discussion of the circumstances surrounding

Rockwell's death continues to be conducted in an atmosphere largely devoid of hard evidence and/or documentary records.

The current three-volume compilation is meant to address this problem head on by providing interested parties for the first time with direct access to over 1,800 pages of archival materials related to the death of George Lincoln Rockwell. These documents include the text of the entire Patler trial transcript and subsequent appeals, FBI forensic and ballistics files, surviving portions of the original evidence files still resident in the Criminal Archives of the Arlington County (VA) Circuit Court, as well as a host of other rare supporting materials which help shed light on the accusations of involvement made against other NSWPP members. These documents may well spur a new round of informed investigation and re-evaluation of the events surrounding Rockwell's death. That a complete copy of the Patler trial transcript has survived to this day itself is something of a minor miracle. Patler's attorney of record, Thomas J. Harrigan, disposed of his client's case files sometime in the late 1980s to early 1990s. Additionally, the State of Virginia's records retention policy calls for the disposal of all criminal case records ten years after sentencing, unless the defendant is either sentenced to death or appeals their case to the State Supreme Court.

I must thank two people without whom assembling this documentary compilation would have been well-nigh impossible. The first is my late wife Julia Jo for her love, wit, patience and unqualified support of my many unusual research projects over the years. The second is fellow researcher Timothy Hatley (VA) who was instrumental in tracking down the lone surviving copy of the Patler Trial transcript in the archives of the Virginia State Supreme Court Library.

James Pontolillo
Arlington, VA

References

Schmaltz, William H., 1999, *Hate: George Lincoln Rockwell and the American Nazi Party*, Washington, DC: Brassey's, 388 pp.

Schmaltz, William H., 2013, *For Race and Nation: George Lincoln Rockwell and the American Nazi Party*, Stillwater, MN: River's Bend Press, 453 pp. [reprint of *Hate* with a different photo selection and a new Afterword by Nicholas Patler]

Simonelli, Frederick J., 1999, *American Fuehrer: George Lincoln Rockwell and the American Nazi Party*, Urbana: University of Illinois Press, 206 pp.

Patler v. Commonwealth of Virginia,
Volume I

Vol. I Pages 1-380

(In Four Volumes)

Record No. 7103

In the
Supreme Court of Appeals of Virginia
at Richmond

JOHN PATLER

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

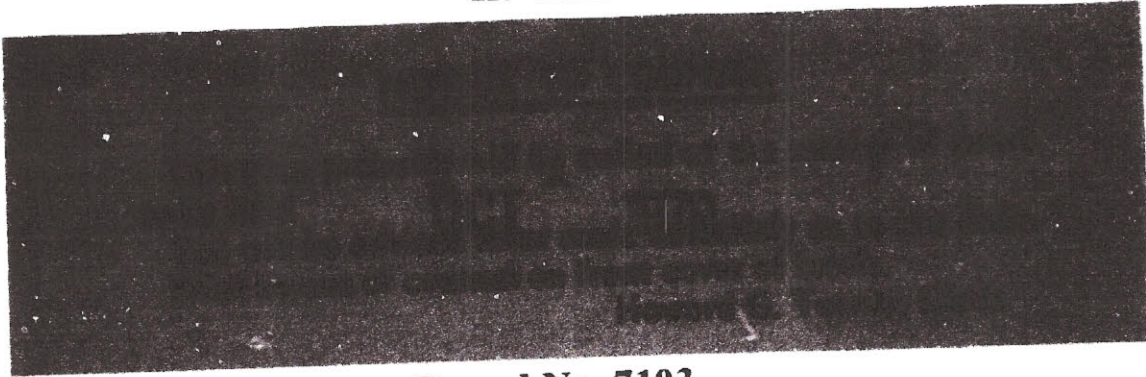
RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

IN THE



Record No. 7103

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1968.

JOHN PATLER,

Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

From the Circuit Court of Arlington County
Charles S. Russell, Judge

Upon the petition of John Patler a writ of error and *superseedeas* is awarded him to a judgment rendered by the Circuit Court of Arlington County on the 27th day of February, 1968, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *superseedeas*, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

* * * * *

CERTIFICATE OF JUDGE OF TRIAL COURT

I, Charles S. Russell, Judge of the Circuit Court of Arlington County, do hereby certify that I was the trial judge in the above-styled case and that I have investigated the claim of indigency of the plaintiff-in-error, John Patler, and I am of the opinion that the plaintiff-in-error is unable to pay, or secure to be paid the costs of printing the record.

Charles S. Russell
Judge of the Circuit Court of
Arlington County, Virginia

* * * * *

Recd 2-25-69.

HGT

* * * * *

AFFIDAVIT OF *INDIGENCY*

Pursuant to Section 19.1-289, Code of Virginia, 1950 as amended, the undersigned states that he is indigent and unable to pay or secure to be paid the costs of printing the record in the above-styled case and requests the record be printed pursuant to the above code section.

John Patler

Subscribed and sworn to this 14th day of February, 1969.
Thomas J. Morris
Notary Public
My Commission expires: January 31st, 1972.

* * * * *

Recd. 2-25-69.

HGT.

* * * * *

RECORD

* * * * *

EXHIBIT #1

AFFIDAVIT FOR SEARCH WARRANT

State of Virginia
County of Highland, to-wit:

This day C. L. Bradley, State Police Investigator personally appeared before me, Judge of the County Court of said County, and made oath that he verily believes that a certain empty cartridge cases and slugs from a Mauser 7.03 cal pistol are located on the Sam Ervin property on the west side of State Highway Route No. 678, in Stonewall Magisterial District, Highland County, Virginia, the said articles being located within the curtilage of a 2 st-frame dwelling, and within pasture land *surrounding* the said dwelling and occupied by or in possession of Sam Ervin unlawfully contains, contrary to law, because the said empty cartridges and slugs may be from a pistol used in the murder of George Lincoln Rockwell, of Arlington, Virginia and further made oath that such information was received through a reliable person, or that he has reasonable cause for such belief.

Given under my hand, this 16th day of September, 1967.

SEYBERT BEVERAGE, Judge. (SEAL)

SEARCH WARRANT

State of Virginia,
County of Highland, to-wit:

To the Sheriff or any Police Officer of said County:
Whereas, C. L. Bradley, State Police Investigator has this day made oath before me that he verily believes that a certain empty cartridges cases and slugs from a Mauser 7.63 cal. pistol are on the Sam Ervin property on the west side of State Highway Route No. 678 located in Stonewall District of said County at or near Williamsville, Va. the said empty cases and slugs may be from a pistol used in the murder of George Lincoln Rockwell, the said evidence being on the curtilage of property owned and occupied by or in possession of

Sam Ervin and unlawfully contains, contrary to law, the said empty cartridge cases and slugs, all of said evidence *bein* on the curtilage of the said dwelling and not within the said dwelling and that such information was received through a reliable person, or that he has reasonable cause for such belief.

These are, therefore, In the name of the Commonwealth, to command you forthwith in the day or night to enter the curtilage of said premises above described and there diligently search for the said empty cartridge cases and slugs and if the same, or any part thereof, be found upon such search to bring the same, and the person, or persons, in whose possession same are found, before the County Court of said County to be disposed of or dealt with according to law. And this you shall in no wise omit.

Given under my hand and seal, this 16th day of September, 1967.

SEYBERT BEVERAGE, Judge. (SEAL)

A-105-A

COMMONWEALTH OF VIRGINIA

vs.

SAM ERVIN

SEARCH WARRANT

Stonewall District, issued Sept. 16, 1967

I, Martin M. Folks, Clerk of the Circuit Court of Highland County do certify that the within is a true copy an Affidavit for a Search Warrant and Search Warrant as deposited for file in my said office by the County Court of the County of Highland.

Given under my hand this 18th day of October, 1967.

Martin M. Folks, Clerk.

The within warrant executed in the County of Highland on the 16th day of Sept., 1967, by searching the within described premises and seizing the following: 3 empty cartridges and 4 sport slugs

Inv. C. L. Bradley
Sheriff—Police—Pro. Inspt'r.

COMM. EX. B

In the County Court of Arlington County, Virginia

To the Sheriff or any Police Officer of said County:

Whereas an affidavit has been filed with me pursuant to law and complaint made before me by Det. S. E. Crickenberger A.C.P.D. that he has information from a reliable source and after an investigation he is of the opinion that ammunition used in a 30 cal. Mauser marked FNX and a Navy ball cap pistol used in the murder of Geo. Lincoln Rockwell is being stored in premises 2522 Lee Hwy. also plans or drawings or other information pertaining to the above crime, and it appearing that there is reasonable and probable cause for such belief;

These are therefore to authorize and require you, in the name of The Commonwealth of Virginia, to enter in the day or night time the house, place, *vehichle*, or thing described as follows:

Dwelling located at 2522 Lee Hwy., Arlington, Virginia, and there diligently search for the said goods and bring the same and the person or persons in whose possession the same are found, before the Judge of the County Court to be disposed of or dealt with according to law.

Given under my hand and seal this 26 day of Aug., 1967.

Earl L. John, Jr., Special Justice

Commonwealth of Virginia:

County of Arlington, to wit:

Before Me, Earl L. Johnson, Jr., a Special Justice of said County or Judge of the County Court for the County aforesaid, as shown on signature line, this day, appeared Det. S. E. Crickenberger ACPD and made affidavit as follows:

(1) Substantially the offense in relation to which search is to be made.

Murder of George Lincoln Rockwell.

(2) The material facts constituting probable cause for issuance of the warrant.

Information received from a reliable source and upon investigation and the route that Patler took from the scene of the crime to the place of arrest and gun recovered.

(3) What is to be searched for under the warrant?

Any ammunition that could be used in a 30 cal. Mauser

marked FNX and a Navy ball cap pistol also plans or drawing or other information pertaining to the *assasination* of Geo. Lincoln Rockwell.

(4) The house, place, vehicle, or baggage to be searched.
Dwelling located at 2522 Lee Hwy., Arlington, Virginia.

Signature of affiant Stuart E. Crickenberger.

Subscribed and sworn to before me this 26 day of Aug., 1967.

Earl L. Johnson, Jr.
Special Justice

Certified of the Clerk of the Circuit Court of Arlington County.

Earl L. Johnson, Jr.
Special Justice

COMMONWEALTH OF VIRGINIA

County of Arlington

Search Warrant

Executed the within search warrant 8:25 PM this 26th day of August, 1967 by delivering a true copy thereof to Mrs. Alice Patler and Mr. Sam Ervin in charge of or legal custodian of:

2522 Lee Hwy. and seizing the following property:
3 letters between Geo. L. Rockwell & Mr. Patler
one bullet casing marked FNX 1952.

S. E. Crickenberger
(Officer and Badge No.)

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* * * * *

Personally appeared before me this day, Gerald E. Williams, the undersigned Notary Public, in and for the County of Arlington, Virginia, whose Commission expires May 9, 1971, THOMAS J. HARRIGAN, who after being duly sworn, deposed and stated that he is attorney for John Patler, defendant in the above-styled case; that there is in the posses-

sion of the Arlington County Police Department, North Uhle Street, Arlington, Virginia, certain written and documentary evidence and physical evidence which is material in this case and that it is proper to be produced before this Court and that this affidavit may be read in support of the Motion for a *Subpoena Duces Tecum* to require the said Arlington County Police Department, by Inspector W. E. Bell, or other duly authorized person, to appear before the Arlington County Court, Arlington, Virginia, at 9:30 o'clock A. M., on the 28th day of September, 1967, and to bring with him at such time and place the following:

1. All tapes of police broadcast on August 25, page 15 } 1967 from the hours of 11:50 o'clock A. M. to 6:00 o'clock P. M. involving any and all radio transmissions connected with the Rockwell murder case.

2. The coat and hat found, and presently being held in the custody of the Arlington County Police Department, as evidence in the Rockwell murder case.

3. One 7.63 Mauser gun found in Bon-Air Park and presently being held in the custody of the Arlington County Police Department as evidence in the Rockwell murder case.

4. All F.B.I. reports concerning tests or laboratory analysis of ballistics reports made on the above-mentioned gun.

5. All F.B.I. laboratory reports, and/or other writings, concerning tests made of defendant's clothes, shoes, fingerprints, analysis made of all shoe prints, and analysis made of tar from the shopping center roof, in the custody of the Arlington County Police Department.

6. Any reports of exculpatory statements of witnesses.

7. All records of gun listings received from the Nazi Headquarters presently in the possession of the Arlington County Police Department, and more specifically any listing of above-mentioned 7.63 Mauser.

* * * * *

Filed Sep 27 1967 County Court, Arlington County, Va.

H. Bruce Green, Clerk

By I. Halcomb, Deputy Clerk.

* * * * *

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COMBINED MOTIONS FOR DISCOVERY AND
INSPECTION ISSUANCE OF *SUBPOENA DUCES
TECUM* AND DISCLOSURE OF ALL EXCULPATORY
MATERIAL AND INFORMATION

COMES NOW, the defendant, John Patler, by counsel, and moves the Court under Section 8.324 of the Virginia Code, 1950 as amended, and in the interest of fair trial and the due process clause of the Fifth Amendment, United States Constitution, and Section Eight of the Virginia Constitution to (a) order the Commonwealth Attorney to permit defense counsel to inspect and copy and/or subject to scientific analysis the below described tangible objects which are in the possession, custody or control of the Commonwealth, (b) order the issuance of a *subpoena duces tecum* to William J. Hassan, the Commonwealth Attorney, or his authorized representative, and to such other persons as may be designated upon a hearing of this Motion, requiring the production of the tangible objects and documents listed or requested below, and (c) order the Commonwealth Attorney to produce and give to the defense counsel all exculpatory evidence as more particularly described below.

The material subject to the combined motions
page 22 } consists of the following:

1. Tangible Objects -

A. Defendant's Oral Statements including, but not limited to those taped prior to appearance of counsel and those included in police reports.

B. All items secured through search and seizures in connection with the case, particularly those obtained by the use of wiretaps or other electronic devices, if any, or the fruits thereof.

C. All scientific reports and analyses made in connection with the case the existence of which is known, or by the exercise of due diligence may become known, to the Commonwealth Attorney, including but not limited to:

(1) the ballistics report and photographs known to have been made.

(2) Defendant's clothing and shoes

- (3) Fingerprints
- (4) Hat and cap found on Larrimore Street
- (5) Towel worn by Defendant

2. All documents, books, papers and objects obtained by the Commonwealth Attorney, in any manner other than by seizure or process, in the course of the Commonwealth's preparation for the trial of this cause, if such books, papers, documents and objects, (i) have been presented to the grand jury; or (ii) are to be offered as evidence on the trial of the Defendant under the indictment (including parts thereof ordered by the Court after an inspection *in camera*); including but not limited to:

page 23 { (1) Police department tape recordings from 12:00 p. m. on, giving descriptions, orders to pick up suspects, etc.

(2) Original notes of arresting officers.

(3) Police reports containing statements of witnesses and of defendant, signed or unsigned, including but not limited to, all statements of Robert Lloyd, acknowledged owner of the murder weapon.

(4) Reports on criminal record and/or psychiatric findings on said Robert Lloyd.

(5) Anonymous letters.

(6) Threatening letters and reports of Phone calls to police or others in connection with the case.

(7) Police reports based on wire tapping or other electronic devices, if any.

(8) Confessions and reports of confessions made by other parties.

3. Due process Exculpatory Evidence:

(a) All information of whatever form, source or nature which tends to exculpate the Defendant either through an indication of his innocence or through the potential impeachment of any Commonwealth witnesses, and all information of whatever form, source or nature which may lead to evidence which tends to exculpate the Defendant whether by indicating his innocence or impeaching the credibility of any potential Commonwealth witness, and all information

page 24 { tion which may be or become of benefit to the Defendant preparing for a presenting the merits of his defense of innocence at trial. The request includes all facts and information of whatever form, source or nature,

which the Commonwealth Attorney (or his assistants), the Federal Bureau of Investigation, the Internal Revenue Service, United States Post Office Department, or any of their agents has or knows about which is or may be calculated to become of benefit to the Defendant either on the merits of the case or on the question of credibility of witnesses; for example: Letters threatening the life of George Lincoln Rockwell presently in the custody of the Postal Department.

(b) The names, addresses and telephone numbers of any persons the Commonwealth knows to possess relevant information to the charge in the indictment, including but not limited to any informants or confidential sources such as:

- (1) Non-identification witnesses;
- (2) Names of army personnel who used mine detecting equipment in the area of Bon Air Park;
- (3) Witnesses given viewings of defendant by the Commonwealth, by lineup, pictures or otherwise (no notification was given to counsel to assure Defendant of proper or fair viewing).
- (4) Books, pictures, letters or any other property taken from, or given to the Arlington County Police Department, or any other law enforcement agency, also any other correspondence and records of gun listings received from Nazi Headquarters and specifically any listing of one page 25 { Mauser serial No. 9811 also known as 7.63 Mauser believed to belong to Robert Lloyd and any other property taken from or given to the Police Department by Nazi Headquarters.
- (5) Criminal Records and Psychiatric reports, if any, of all present or past Nazi Members, including but not limited to the Arlington, Virginia area.

As grounds for this Combined Motion, defendant states that the requested matter is material and necessary to the preparation of his defense on the merits of the charges against him, and that the items are evidentiary and the production of them is reasonable and will expedite the trial of the cause and materially aid the defendant in the preparation of his defense, that some of the material requested is exculpatory in nature, and such other reasons as will appear in a later Memorandum of Points and Authorities and as shall further appear at the hearing upon this Combined Motion.

Filed Nov 2 1967.

H. Bruce Green, Clerk Circuit Court, Arlington County, Va.

By V. T., Deputy Clerk.

* * * * *

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MOTIONS TO SUPPRESS EVIDENCE

For purposes of clarity the following motions are divided into categories numbered I, II, and III.

I

COMES NOW, the defendant, John Patler, by counsel and respectfully moves this Court to suppress and return the following evidence seized as a result of his illegal arrest which was without probable cause and his unlawful detention thereafter, to-wit:

1. All clothing, shoes, and all other wearing apparel seized from the person of the defendant after his illegal arrest.
2. White bath towel taken from the defendant after his illegal arrest.
3. All testimony and evidence relating to scientific analysis on clothing, shoes, white bath towel and all other items illegally seized from the defendant after his arrest which were the fruits of the illegal arrest and gained by exploitation of the arrest without probable cause.
4. All evidence seized at the premises known as 2522 Lee Highway, Arlington, Virginia, which items were
page 27 } seized by exploitation of the illegal arrest which
arrest was without probable cause.
5. All empty cartridges and spent slugs and other evidence seized at his residence described as property on State Highway Route No. 678, Highland County, Virginia, which items were seized by the exploitation of the illegal arrest which arrest was without probable cause.
6. Any and all statements made by the defendant which was the fruit of the illegal arrest.
7. All fingerprints taken from the defendant which are the fruits of the illegal arrest.

8. All other physical or verbal evidence received as a result of exploitation of the illegal arrest.

As grounds for the said motion the defendant states:

1. The defendant was arrested and illegally detained without a warrant and without probable cause in violation of his rights under Section Eight and Ten of the Constitution of Virginia, in violation of the Code of Virginia, 1950 as amended, and in violation of his rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States.

2. That the search of his person and the search and seizure of his clothing, shoes and all other items was therefore illegal and all fruits of said search and seizure must be suppressed.

3. That all statements either written or oral or taped made after his illegal arrest were fruits of the illegal arrest.

4. That all evidence secured at the premises page 28 { known as 2522 Lee Highway, Arlington, Virginia after defendant's illegal arrest and all scientific analysis on such evidence were fruits of the illegal arrest and gained by exploitation of the illegal arrest and should be suppressed.

5. That all evidence secured at his residence known as State Highway Route No. 678, Highland County, Virginia, Sam Ervin property and scientific analysis on such evidence were fruits of the illegal arrest and gained by exploitation of the alleged arrest and should be suppressed.

6. And for such further reasons as may appear upon oral hearing of this motion.

II

COMES NOW, the defendant, John Patler, by counsel, and respectfully moves this Court to suppress and return any and all evidence seized as a result of an illegal search of his residence in Arlington, to-wit: 2522 Lee Highway, Arlington, Virginia, which evidence is identified as follows:

1. Three letters between George Lincoln Rockwell and John Patler and any other letters of whatsoever kind.

2. One bullet casing marked FNT 1952.

3. All other evidence seized during said search.

4. All evidence secured thereafter which is the fruit of this illegal search and gained by exploitation of the illegal search.

As grounds for the above motion the defendant states:

1. That the affidavit supporting the search warrant is

insufficient on its face to establish probable cause
page 29 } for the issuance of a search warrant and that
said search and seizure was without probable
cause.

2. That the affidavit for the search warrant and issuance of the search warrant was in violation of the defendant's rights and illegal under Section Eight and Ten of the Constitution of Virginia, in violation of the Code of Virginia, 1950 as amended, and illegal and in violation of the defendant's constitutional rights under the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States.

3. That the search was not incident to the arrest of the defendant nor consented to by anyone.

4. That the search warrant was a general warrant in that it was exploratory and allowed the officers to search for "any other information", which is illegal and in violation of Section Eight and Ten of the Constitution of Virginia, the Code of Virginia, 1950 as amended, and the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States.

5. The property seized was not that which was specified in the search warrant and that all items were seized in violation of defendant's rights under Section Eight and Ten of the Constitution of Virginia, and in violation of the Code of Virginia, 1950 as amended and contrary to the provisions of the Fourth and Fifth and Fourteenth Amendments of the Constitution of the United States.

6. That the search warrant was the fruit of an illegal arrest which was without probable cause, and illegal detention of the defendant.

page 30 }

III

COMES NOW, the defendant, John Patler, by counsel, and further moves the Court to suppress and return the following evidence seized as a result of an illegal search of his residence in Highland County, Virginia, to-wit: the property on the West Side of Highway Route No. 678, in Stonewall Magisterial District, Highland County, Virginia referred to as the Sam Ervin property, which items are particularly identified as follows:

1. All shell casings and all spent slugs found before or during the said search.

2. All scientific or ballistics analyses on the said evidence which is the fruit of the illegal search and seizure.

3. Any other evidence seized as a result of the illegal search including but not limited to visual observations at the time of the search.

As grounds for the above motion the defendant states:

1. That the affidavit supporting the search warrant is insufficient on its face to establish probable cause for the issuance of a search warrant and that said search and seizure was without probable cause and illegal and said search was in violation of defendant's rights under Section Eight and Ten of the Constitution of Virginia, illegal and unlawful under the Code Virginia, 1950 as amended, and illegal and in violation of the defendant's rights under the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States.

2. That the search was not incident to the arrest of the defendant nor consented to by anyone.

page 31 } 3. That the search warrant was for exploratory purposes in violation of Section Eight and Ten of the Constitution of Virginia, the Code of Virginia, 1950 as amended, and illegal and in violation of defendant's rights under the Fourth, Fifth, and Fourteenth Amendments of the Constitution of the United States.

4. That the search and seizure of the above styled evidence from the property and subsequent scientific analyses was the fruit of an illegal arrest of the defendant which was without probable cause and gained by the exploitation of said illegal arrest.

WHEREFORE, the defendant prays that a hearing be given defendant on the above motions and that:

1. The Court suppress all evidence secured as the result of the illegal arrest without probable cause and the fruits of said illegal arrest.

2. The Court suppress all evidence secured as the result of the illegal search and seizure and the fruits of said search of the premises known as 2522 Lee Highway, Arlington, Virginia.

3. That the Court suppress all evidence secured as a result of the illegal search and seizure and the fruits of said search of the premises located in Highland County, Virginia.

* * * * *

page 63 }

* * * * *

THE 22nd day of November 1967, came the Commonwealth of Virginia, by its Attorney, the Defendant in custody of the Sheriff and his Attorneys, Thomas J. Morris, Thomas J. Harrigan and Helen S. Lane.

WHEREUPON this case came on to be heard upon Defendant's motion to *he* Court for a *Subpoena Duces Tecum* to be issued upon the Commonwealth Attorney, which motion the Court denied and to which ruling of the Court the Defendant duly excepted.

THEREUPON the Defendant moved the Court to suppress evidence *siezed* incidental to the arrest of the Defendant on the ground that the said arrest was made without warrant and without probable cause, which motion the Court denied, and to which ruling of the Court the Defendant duly excepted.

WHEREUPON the Court ordered that this case be and *the same is continued to November 24, 1967 for further hearing on motions.*

AND the Defendant is remanded to jail.

Entered this 24th day of November, 1967.

CHARLES S. RUSSELL
Judge

page 64 }

* * * * *

This affidavit and accompanying draft subpoena were produced in court on November 22nd, 1967 in connection with argument on Motion for Discovery and Inspection made by defendant. They are filed herein and made a part of the record on this 24th day of November, 1967.

CHARLES S. RUSSELL
Judge

AFFIDAVIT IN SUPPORT OF MOTION FOR
DISCOVERY AND INSPECTION

County of Arlington
State of Virginia, to-wit:

HELEN S. LANE, being duly sworn, deposes and says that: I am one of the attorneys for the above named defendant and am fully familiar with all of the facts and circumstances in this case.

There was a Preliminary Hearing in the County Court in this matter. The evidence was later submitted by the prosecution directly to the Grand Jury. The defendant was indicted by the Grand Jury of Arlington County, charged with the murder of George Lincoln Rockwell.

I have made an investigation of the facts and circumstances in this case and verily believe that the Police Department and District Attorney's office have in their possession statements of the defendant made at the time of his arrest.

The defendant has informed me that he does not recollect the contents of said statements and I verily believe that these statements are and will be a vital part of the prosecution's case and will be most vital to the defendant's defense.

Unless these statements are produced, the defendant will be deprived of his right to a fair and just trial.

I further believe that the prosecution has in its possession statements of members and ex-members of the American Nazi Party and other witnesses as the basis of charges against the defendant. Such statements were made close to the time of the happening of the events alleged in the indictment.

In fact, the information of the defendant and myself concerning these statements and these witnesses is at best scanty and minimal.

I respectfully represent and allege that the statements of these witnesses are vital to a proper defense in this matter. I further allege that unless this information is made available to the defendant for inspection, defendant will be deprived of his constitutional rights and will be deprived of the opportunity for a fair trial.

WHEREFORE, I respectfully request that the relief sought for in the notice of motion be in all respects granted.

Filed Nov 24 1967.

H. Bruce Green, Clerk Circuit Court, Arlington County, Va.

By V. Green, Deputy Clerk.

* * * * *

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* * * * *

The 27th day of November 1967, came the Commonwealth of Virginia, by its Attorney, the Defendant in custody of the Sheriff and his Attorneys, Thomas J. Morris, Thomas J. Harrigan and Helen S. Lane.

WHEREUPON this motion came on to be heard upon Defendant's motion to suppress evidence seized as a result of a search of the property of Sam Ervin, heretofore described, in Highland County, Virginia, argument of counsel and evidence presented in open Court.

UPON CONSIDERATION THEREOF it is the opinion of the Court that said motion should be and the same is hereby denied, to which ruling of the Court the Defendant duly excepted.

AND the Defendant is remanded to the custody of the Sheriff.

Entered this 29th day of November 1967.

CHARLES S. RUSSELL
Judge

page 83 }

* * * * *

THE 27th day of November 1967 came the Commonwealth of Virginia, by its Attorney, the Defendant in custody of the Sheriff and his Attorneys, Thomas J. Harrigan, Thomas J. Morris and Mrs. Helen S. Lane.

* * * * *

WHEREUPON out of the presence of the veniremen reporting for jury duty on this date, the Commonwealth of Virginia and the Defendant moved the Court for leave to question the veniremen separately, which said motion the Court denied, and to which said ruling of the Court, both the Commonwealth and the Defendant duly excepted.

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page 84 }

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Entered this 30th day of November 1967.

CHARLES S. RUSSELL
Judge

* * * * *

page 104 }

* * * * *

The 11th day of December 1967 came the Commonwealth of Virginia, by its Attorney, the Defendant in custody of the Sheriff and his Attorneys, Thomas J. Harrigan, Thomas J. Morris and Helen S. Lane.

* * * * *

THEREUPON, after the luncheon recess, the jury, in custody of the Sheriff, returned to the jury box and the Commonwealth of Virginia, again proceeded with the introduction of its evidence and upon its conclusion the Court directed the Jury to retire to its room.

WHEREUPON the Defendant moved the Court to strike the evidence of the Commonwealth of Virginia, which said motion the Court denied, and to which said ruling of the Court the defendant duly excepted.

* * * * *

Entered this 15th day of December 1967.

CHARLES S. RUSSELL
Judge

* * * * *

page 111b }

INSTRUCTION NO. C

The Court instructs the jury that the law presumes every person charged with crime to be innocent until the Commonwealth has established his guilt by evidence so strong, so

clear, and so conclusive, that there is left in the minds of the jury no reasonable doubt as to his guilt. This presumption is an abiding presumption, and goes with the accused through the entire case and applies at every stage thereof until repelled by proof. And in this connection the jury is instructed that it is never sufficient that the accused, upon speculative theory or conjecture, may be guilty; or that by the preponderance of the testimony his guilt is more probable than his innocence; for until his guilt has been proved beyond all reasonable doubt in the precise and narrow terms as charged in the indictment, the presumption of innocence still applies, and they must acquit him.

Refused

CSR

* * * * *

page 112b } INSTRUCTION NO. E

The Court instructs the jury that if you believe from the evidence that the defendant was not brought before a magistrate within a reasonable time after his arrest and given the opportunity to obtain bail and that any such failure prevented him from having the opportunity of obtaining evidence in his behalf, then you shall acquit the defendant.

Refused.

CSR

page 112c } INSTRUCTION NO. F

The Court instructs the jury that the evidence introduced by the defendant, that he was not at the scene of the alleged crime, need not have been such as to establish this as a fact, to entitle him to an acquittal; but if its effect has been such as to bring you to that state of mind that you have any reasonable doubt of his presence there, it is as much your duty to find him not guilty in this case, as it would be if you were convinced he was not there or was otherwise not guilty. If there is a reasonable doubt in your minds as to this, it is a fact in the case that he was not there, and it is to be by you so considered in his behalf as much as if proven to be true beyond any question of doubt.

Refused.

CSR

* * * * *

page 113b }

INSTRUCTION NO. H

The Court instructs the jury that evidence has been introduced that the defendant was not present at the time when, and the place where, this offense was allegedly committed. The claim of alibi is legitimate, legal and proper. The defendant may not be convicted of the offense with which he is charged unless the Commonwealth proves beyond a reasonable doubt that the defendant was present at the time when, and at the place where, the offense was committed.

If, after a full and fair consideration of all the facts and circumstances in evidence, you find that the Commonwealth has failed to prove beyond a reasonable doubt that the defendant was present at the time when, and the place where, the offense charged was allegedly committed, you must find the defendant not guilty.

Refused.

CSR

page 113c }

INSTRUCTION NO. I

The Court instructs the jury that in this case the Commonwealth relies wholly upon circumstantial evidence to establish the guilt of the accused, and therefore in determining his guilt or innocence the jury must be governed by the following rules of law, which are binding upon you in the case:

1. It is essential that all the circumstances from which the conclusion of defendant's guilt is to be drawn by the jury shall be established by full proof, and the State is bound to prove every single circumstance which is essential to the conclusion of guilt, in the same manner and to the same extent as if the whole issue had rested upon the proof of each individual and essential circumstance.

2. All the facts and circumstances, when established by full proof, must be consistent with the hypothesis of the guilt of the accused.

3. It is also essential that the circumstances should be of conclusive nature and tendency. Evidence is always indefinite and inconclusive when it raises no more than a mere or limited probability in favor of the guilt of the accused, as compared with some definite probability of his innocence, whether the precise proof can or cannot be ascertained. Such evidence is always insufficient where, assuming all to be proved which the evidence tends to prove, some other hypothesis may still be true; for it is the actual exclusion of every

other hypothesis which invests mere circumstances with the force of proof. Whenever, therefore, the evidence leaves it indifferent which of several hypotheses is true, or merely establishes some finite probability in favor of one hypothesis rather than another, such evidence cannot amount to proof, however great the probability may be.

4. It is likewise essential that the circumstances relied upon to prove the guilt of the accused shall to a moral certainty exclude every hypothesis but that of his guilt.

Refused.

CSR

page 113e } INSTRUCTION NO. I-1

The Court instructs the jury that, if after you have weighed, analyzed and considered the evidence in this case, you find that you cannot say that it excludes, beyond all reasonable doubt, every hypothesis inconsistent with the innocence of the accused, that is, if such evidence creates only an inference or conclusion of strong suspicion that the accused was in some way connected with the crime, then it is not sufficient to justify a verdict of guilty: for suspicion however strong is never sufficient to convict. Evidence is always insufficient, where, assuming all to be proved which the evidence tends to prove, some other hypothesis may still be true; for it is the actual exclusion of every other hypothesis which invests mere circumstances with the force of truth; and where the evidence leaves it indifferent which of several hypotheses is true, or establishes only some finite probability in favor of one hypothesis, such evidence cannot amount to proof, however great the probability may be. The accused is entitled to an acquittal unless the fact of guilt is proven to the actual exclusion of every reasonable hypothesis of innocence.

Refused.

CSR

page 113f } INSTRUCTION NO. J

The Court instructs the jury that upon the trial of this case, if a reasonable doubt of any fact necessary to establish the guilt of the accused as charged in the indictment be raised by the evidence or lack of evidence, such doubt is decisive, and the jury must acquit the accused, since a ver-

dict of "not guilty" means no more than that the guilt of the accused has not been established in the precise, specific and narrow form prescribed by law.

Refused.

CSR

* * * * *

page 115b }

INSTRUCTION NO. P

The Court further instructs the jury that before they can find the defendant guilty in the indictment in this case, that each and every one of the jurors must be convinced by all the evidence in the case, beyond all reasonable doubt, that the accused is guilty as charged in the indictment; that it is the duty of every juror to consider all the evidence in the case, the instructions of the Court, the argument of counsel, and the argument of his fellow jurors; that no juror should give up or surrender his own opinion simply because the other jurors are of a different opinion; and that no juror entertaining a reasonable doubt as to the guilt of the defendant should join in a verdict of guilty.

And in this connection the jury is further instructed that the jury room is no place for pride of opinion or obstinacy, and it is the duty of the jurors to discuss the evidence in a spirit of fairness and candor with each other, and with open minds to give careful consideration to the views of their fellow jurors, and, if it can be done without a sacrifice of conscientious convictions, agree upon a verdict.

Refused.

CSR

* * * * *

page 116b }

INSTRUCTION NO. T

The Court instructs the jury where threats of other persons against the deceased are accompanied by proof tending to show the guilt of the other persons, or connecting them with the crime, or where the evidence against defendant is wholly circumstantial, the threats of other persons against the deceased become competent evidence on behalf of the defendant.

Refused.

CSR

* * * * *

page 118b } INSTRUCTION NO. W

The Court instructs the jury that the testimony of identification witnesses must always be scanned with great caution and in this context requires consideration of various factors, for example: the prior opportunity to observe the alleged event; the existence of any discrepancy between the initial description and the defendant's actual description; any description of wearing apparel contrary to that worn by the defendant; any identification of other persons; opportunity to observe the defendant's picture in the newspapers and on television; a failure to identify the defendant on a prior occasion; lapse of time between the alleged act and the identification of the defendant.

In this connection the Court instructs you that you may consider whether any suggestive influences may have influenced the witnesses method of formulating an opinion.

Refused.

CSR

* * * * *

page 122 } INSTRUCTION 5

The Court instructs the jury that where the Commonwealth has established a *prima facie* case and the defendant relies upon the defense of alibi, the burden is upon him to prove it, not beyond a reasonable doubt nor by a preponderance of the evidence but by such evidence and to such a degree of certainty as will, when the whole evidence is considered, create and leave in the mind of the jury a reasonable doubt as to the guilt of the defendant.

A *prima facie* case is one which is established by sufficient evidence which, if not rebutted, remains sufficient.

CSR

page 129 }

* * * * *

WHEREUPON the Defendant renewed his motion to strike the evidence of the Commonwealth of Virginia, which said motion the Court denied and to which said ruling of the Court the Defendant duly excepted.

* * * *

00.02 hours
16 December 1967

"We the jury find the defendant guilty of murder in the first degree and fix his punishment to be confinement in the penitentiary for a term of 20 years.

(Signed) George F. Clark, Jr.
Foreman"

* * * *

Entered this 18th day of December 1967.

CHARLES S. RUSSELL
Judge

page 134 }

* * * *

**MOTION TO SET ASIDE THE VERDICT AND ENTER
JUDGMENT OF ACQUITTAL OR IN THE ALTERNA-
TIVE AWARD A NEW TRIAL**

COMES NOW, the defendant, John Patler, and moves the Court to set aside the verdict as being contrary to the law and the evidence and enter judgment of acquittal or in the alternative award a new trial. As grounds for said motion the defendant, by counsel, alleges as follows:

1. That the verdict of the jury was contrary to the law and evidence in that the evidence was insufficient as a matter of law to support the verdict, in that the verdict was based solely on circumstantial evidence which did not establish guilt to a moral certainty.

2. The Court erred in denying the defense motion to strike the evidence of the Commonwealth at the conclusion of the Commonwealth's case on the ground that evidence taken in its most favorable light did not exclude every reasonable hypothesis of innocence.

3. The Court erred in denying the motion to strike the evidence of the Commonwealth at the conclusion of the case on the ground that the evidence established a reasonable doubt as a matter of law.

4. The Court erred in refusing to allow counsel to question each juror outside the presence of other members of the jury panel as to interest, bias, prejudice, expression of opinions, in order to determine if each juror stood indifferent to the cause.

5. The Court erred in refusing to allow counsel for the defense to ask the jury panel on *voir dire* as to whether any expressed or formed any opinion about the Nazi Party or members therein or whether any jury member was sensible of any bias or prejudice against the Nazi Party and members and ex-members therein even after two members of the jury expressed prejudicial feelings against the Nazi Party.

6. The Court erred in refusing to strike for cause all jurors who had read the newspaper accounts and saw television reports concerning the Rockwell shooting.

7. The Court erred in failing to find the arrest of the defendant was without probable cause and failing to suppress all evidence which was a fruit of said illegality.

8. The Court erred in admitting evidence of the condition of the defendant's clothes on the ground all such testimony was the fruit of the illegal arrest.

9. The Court erred in refusing to suppress the bullet casings and slugs found on the Highland County farm which were seized during an illegal search for reasons stated in the record.

10. The Court erred in allowing evidence of slugs and casings found on the Highland County farm to go to the jury on the ground they were never connected to the defendant and it left the jury to speculate as to their evidentiary value and for other reasons stated in the record.

11. The Court erred in admitting the coat found into evidence on the ground that no evidence connected the coat with the criminal agent and therefore left the jury to speculate on its evidentiary value and for other reasons stated in the record.

12. The Court erred in admitting into evidence the piece of woman's stocking panties found in the coat pocket during the trial where no evidence was presented showing the panties were in the pocket when the coat was found and for other reasons appearing in the record.

13. The Court erred in admitting into evidence the letter from Patler to Rockwell (Exhibit 5-G) for the reasons stated in the record.

14. The Court erred in failing to strike the Courtroom identification testimony of Mrs. Alma Kilpatrick on the

ground it was a product of an illegal one-man lineup conducted in the absence of and without notice to counsel and for other reasons appearing in the record.

15. The Court erred in refusing to strike the identification testimony of Mrs. Nancy Thoburn on the ground it was based solely on her observation of the defendant during an illegal one-man lineup conducted in the absence of and without notice to counsel and for other reasons appearing in the record.

16. The Court erred in allowing Mrs. Thoburn to testify she had seen Mr. Patler at the police station on August 25th which viewing was made during an illegal one-man lineup without notice to defendant and without notice to and in the absence of counsel.

17. The Court erred in admitting into evidence the Courtroom identification testimony of Gordon Hall
page 137 } since his testimony was predicated on newspaper pictures and stories concerning the apprehension of the defendant where such pictures and articles were so suggestive and conducive to irreparable mistaken identification, that such evidence violated defendant's constitutional rights.

18. The Court erred in allowing the hearsay telephone conversations from unknown parties to the police station shortly after the shooting to be played from tapes to the jury over objection of defense counsel.

19. The Court erred in allowing Detective Sargeant Walter Kadel to testify in rebuttal as to an inconsistent statement allegedly made by the witness Sam Irvin which alleged statement was acquired during and the fruit of an admitted illegal search of the defendant's home.

20. The Court erred in allowing Mrs. Thoburn to relate what she told the police officer immediately after the illegal viewing of the defendant on the grounds that:

(1) Since the Courtroom identification was stricken, the prior out-of-court declaration of the witness should not have been allowed to rehabilitate the witness.

(2) That statement was a product of and directly related to the illegal viewing.

(3) For other reasons stated in the record.

21. The Court erred in failing to require the Commonwealth Attorney to proffer evidence when requested by defense counsel as indicated in the record.

page 138 } 22. The Court erred in denying defendant's

motion for the Commonwealth to produce all exculpatory evidence prior to trial in that it would have aided the defendant in the preparation of his defense and his cross-examination of witnesses in securing additional evidence favorable to the defense.

23. And all other reasons apparent in the record and duly objected and excepted to.

Filed Jan 5 1968.

H. Bruce Green, Clerk Circuit Court, Arlington County, Va.

By V. Green, Deputy Clerk.

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page 149 }

* * * * *

THE 23rd day of February 1968 came the Commonwealth of Virginia, by its Attorney, the Defendant pursuant to his recognizance and his Attorneys, Thomas J. Harrigan, Thomas J. Morris and Helen S. Lane.

THEREUPON the Court heard argument of counsel on the Defendant's motions to set aside the verdict of the Jury and for a new trial.

UPON CONSIDERATION WHEREOF it is the opinion of the Court that the said motions should be and the same hereby are denied, to which said ruling of the Court the Defendant excepted.

WHEREUPON the Defendant was ordered to stand and it being demanded of him if anything for himself he had or knew to say why Judgment should not be pronounced against him according to law made a statement disclaiming his guilt.

THE Court being of the opinion that the verdict of the Jury is right and proper doth hereby find the Defendant "Guilty" of Murder in the first degree.

IT IS THE JUDGMENT of this Court that the said JOHN PATLER be and he hereby is sentenced to confinement in the penitentiary of this Commonwealth for a period of twenty (20) years, the period by the Jury heretofore ascertained, and that the Commonwealth of Virginia do recover against the said John Patler its costs by it about its prosecution in this behalf expended; and that the Defendant be al-

lowed credit for the time spent in jail awaiting trial, namely from August 25, 1967 to February 8, 1968 inclusive.

THEREUPON the Defendant signified his intention of applying to the Supreme Court of Appeals of Virginia for a Writ of Error to the Judgment of the Court and moved the Court to suspend the execution of sentence for a period of four (4) months to permit the Defendant to apply for a Writ of Error; which said motion the Court granted and accordingly ordered that the execution of the sentence pronounced against the Defendant be and the same hereby is suspended for four (4) months and if the Petition for a Writ of Error be timely filed, then thereafter until such petition is acted upon by the Supreme Court of Appeals of Virginia.

WHEREUPON the Commonwealth of Virginia moved the Court to revoke the bail bond herein and remand the Defendant to jail, which said motion the Court denied and ordered that the said bond remain in full force and effect.

Entered this 27th day of February 1968.

CHARLES S. RUSSELL
Judge

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To: H. Bruce Green, Clerk
Arlington County Courthouse
Arlington, Virginia

TAKE NOTICE that the undersigned will apply for an appeal from the final judgment entered on the 27th day of February, 1968 in the above styled case.

ASSIGNMENT OF ERROR

1. That the verdict of the jury was contrary to the law and evidence in that the evidence was insufficient as a matter of law to support the verdict in that the verdict was based solely on circumstantial evidence which did not establish guilt to a moral certainty and for other reasons stated in the record.
2. The Court erred in denying the defense motion to strike

the evidence of the Commonwealth at the conclusion of the Commonwealth's case on the ground that evidence taken in its most favorable light did not exclude every reasonable hypothesis of innocence.

3. The Court erred in denying the motion to strike the evidence of the Commonwealth at the conclusion of the case on the ground that the evidence established a reasonable doubt as a matter of law.

4. The Court erred in refusing to allow counsel page 153 } sel to question each juror outside the presence of other members of the jury panel as to interest, bias, prejudice, expression of opinions, in order to determine if each juror stood indifferent to the cause, which motion was made by the Commonwealth Attorney and then by Defense Counsel.

5. The Court erred in refusing to allow counsel for the defense to ask the jury panel on *voir dire* as to whether any expressed or formed any opinion about the Nazi Party of members therein or whether any jury member was sensible of any bias or prejudice against the Nazi Party and members and ex-members therein even after two members of the jury expressed prejudicial feelings against the Nazi Party.

6. The Court erred in refusing to strike for cause all jurors who had read the *newspaper* accounts and saw television reports concerning the Rockwell shooting.

7. The Court erred in refusing to suppress the bullet casings and slugs found on the Highland County farm which were seized during an illegal search on the grounds that they were the fruits of an illegal search and for other reasons stated in the record.

8. The Court erred in allowing evidence of slugs and casings found on the Highland County farm to go to the jury on the ground they were never connected to the defendant and it left the jury to speculate as to their evidentiary value and for other reasons stated in the record.

9. The Court erred in failing to strike the Courtroom identification testimony of Mrs. Alma Kilpatrick on the ground it was a product of two illegal one-man showups page 154 } conducted in the absence of and without notice to defendant or counsel and for other reasons appearing in the record.

10. The Court erred in refusing to strike the identification testimony of Mrs. Nancy Thoburn on the ground it was the fruit of her observations of the defendant during an illegal one-man lineup conducted in the absence of and without

notice to defendant or counsel and for other reasons appearing in the record.

11. The Court erred in allowing Mrs. Thoburn to testify she had seen Mr. Patler at the police station on August 25th which viewing was made during an illegal one-man lineup without notice to defendant and without notice to and in the absence of counsel.

12. The Court erred in allowing Mrs. Thoburn to relate what she told the police officer immediately after the illegal viewing of the defendant on the grounds that:

(1) Since the Courtroom identification was stricken, the prior out-of-court declaration of the witness should not have been allowed to rehabilitate the witness.

(2) That statement was a product of and directly related to the illegal viewing.

(3) For other reasons stated in the record.

13. The Court erred in refusing to require the Commonwealth attorney to proffer whether identification witnesses had attended lineups conducted in violation of defendants right to counsel and in the absence of notice to page 155 } the defendant and counsel to-wit: testimony of Mrs. Kilpatrick and Mrs. Thoburn.

14. The Court erred in admitting into evidence the Courtroom identification testimony of Glenn Hall since his testimony was predicated on newspaper pictures and stories concerning the apprehension of the defendant where such pictures and articles were so suggestive and conducive to irreparable mistaken identification, that such evidence violated defendant's constitutional rights.

15. The Court erred in allowing Detective Sargeant Walter Kadel to testify in rebuttal as to an inconsistent statement allegedly made by the witness Sam Ervin which alleged statement was acquired during and the fruit of an admitted illegal search of the defendant's home.

16. The Court erred in denying each matter requested in the combined motion for discovery and inspection, motion for a *subpoena duces tecum* and motion for disclosure of all exculpatory material and information itemized in the motions prior to trial.

17. The Court erred in denying defendant's motion for all exculpatory evidence prior to trial that would have aided the defendant in the preparations of his defense, in cross examination of witnesses, and in securing additional evidence favorable to the defendant.

18. The Court erred in ruling that the Commonwealth Attorney could determine what evidence should be produced at trial which was exculpatory or helpful to the defense.

19. The Court erred in overruling the motion to suppress which alleged that the arrest of the defendant was without probable cause and erred in failing to suppress all evidence which was a fruit of said illegality.

20. The Court erred in admitting evidence of page 156 } the condition of the defendant's clothes on the ground all such testimony was the fruit of the illegal arrest.

21. The Court erred in allowing the hearsay telephone conversations from unknown parties to the police station shortly after the shooting to be played from tapes to the jury over objection of defense counsel.

22. The Court erred in admitting the coat found into evidence on the ground that no evidence connected the coat with the criminal agent and therefore left the jury to speculate on its evidentiary value and for other reasons stated in the record.

23. The Court erred in admitting into evidence the piece of woman's stocking panties found in the coat pocket during the trial where no evidence was presented showing the panties were in the pocket when the coat was found and for other reasons appearing in the record.

24. The Court erred in admitting into evidence the letter from Patler to Rockwell (Exhibit 5-G) for the reasons stated in the record.

25. The Court erred in refusing defendant's Instruction No. W dealing with testimony of *identification* witnesses for reasons stated in the record.

26. The Court erred in refusing Instruction No. T dealing with threats against the deceased by other persons for reasons stated in the record.

27. The Court erred in refusing Instruction No. P for reasons stated in the record.

28. The Court erred in refusing Instruction No. J for reasons stated in the record.

29. The Court erred in refusing Instruction page 157 } No. H dealing with alibi for reasons stated in the record.

30. The Court erred in refusing Instruction F dealing with alibi for reasons stated in the record.

31. The Court erred in refusing Instruction No. E for reasons stated in the record.

32. The Court erred in refusing Instruction No. C on presumption of innocence for reasons stated in the record.

33. The Court erred in refusing Instruction No. I on circumstantial evidence for reasons stated in the record.

34. The Court erred in refusing Instruction No. I-1 for reasons stated in the record.

35. The Court erred in granting Instruction No. 5 for the Commonwealth in that it:

(1) Infers the Commonwealth established a *prima facie* case.

(2) It states only sufficient evidence is necessary to establish a *prima facie* case instead of evidence beyond a reasonable doubt.

36. The Court erred in refusing to grant a mistrial on the ground of prejudicial remarks made by the Commonwealth Attorney at bench conferences to defense counsel which remarks were deliberately audible to the jury.

37. The Court erred in conducting the *voir dire* examination on eight year old Christine Freeman in the presence of the jury on the grounds it forced defense counsel to repeatedly object to the procedure in the presence of the jury and for other reasons appearing in the record.

38. The Court erred in allowing Detective page 158 { Faulconer to testify as to his opinion that the reason he put handcuffs on the defendant was that he was similar to the subject of the communication on the radio.

39. The Court erred in failing to strike the testimony concerning the defendant's affiliation with Kill Magazine in 1962 on the grounds it was remote, immaterial and not relevant to any issue.

Respectfully submitted,

John Patler
by Counsel

Filed Apr 26 1968.

H. Bruce Green, Clerk Circuit Court, Arlington County, Va.

By V.G., Deputy Clerk.

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page 3 }

* * * * *

Mr. Hassan: Ready for the Commonwealth.

Mr. Harrigan: Ready for the Defense.

The Court: Gentlemen, as I understand it, this case is here on two pretrial motions filed by the defendant; a motion in effect for discovery, and a motion to suppress.

Is that correct?

Mr. Hassan: Not as I read it, Your Honor. As I read it, we're here on a motion to discover and here on a motion to suppress and here on a motion to suppress on a search warrant and on a motion on a search warrant.

There are four separate distinct matters before the court.

The Court: Well, there are various branches of the discovery motion and various items to be suppressed and basically there are these two items.

Is that not true?

Mr. Hassan: I think the first, there—

Mr. Morris: (interposing) The Court is absolutely
page 4 } right.

We're here basically on two motions, whether the one motion does involve three separate positions or not.

The Court: All right.

Which motion do you wish to argue first, Mr. Morris?

Mr. Morris: Discovery motion, Your Honor.

The Court: All right.

The Court will announce for the benefit of those who are in attendance today that this particular phase of this case is a matter which should not be publicize.

The press and others have a right to know what goes on here, they even have the right to publish it. But if they do the chances of a prejudice in drawing a jury are substantial because whether these motions are granted or decided, the mere fact that they are made tends to reveal some of the evidence in the case and if it is published it will be difficult to find a jury which has not associated some of that information.

The Court, therefore, requests all persons present to refrain from discussing this matter outside the Court room.

All right.

page 5 } (Whereupon, witnesses were sworn.)

Mr. Harrigan: May we have a rule on the witnesses, Your Honor?

The Court: Yes sir.

All witness' in this case will go with the bailiff and remain. Detective Light will be sworn.

Mr. Hassan: If Your Honor please, he hasn't been subpoenaed.

Mr. Harrigan: He's here.

Mr. Hassan: To help me; he's not a witness. He's been preparing this case with me and I say no to it.

If they're going to subpoena him then they should have stated a reason.

Mr. Harrigan: He participated in the first search on Lee Highway, Your Honor.

The Court: Do you propose to call him as a witness today?

Mr. Harrigan: Yes sir, Your Honor.

The Court: Let him be sworn.

(Whereupon, witness was sworn.)

Mr. Harrigan: Are you ready?

The Court: Yes sir.

page 6 } Mr. Harrigan: Your Honor, the motion that we filed asks basically for three things, the first being a Subpoena *Duces Tecum* for various items of information believed to be in the possession of the Commonwealth attorney, Mr. Hassan.

The second part of the motion basically deals with exculpatory evidence which perhaps would not be a subject of subpoena *duces tecum*.

And the third would be all other evidence known to the Commonwealth Attorney which may tend to exculpate or be useful in the defense of Mr. Patler in this particular case.

In dealing with this particular motion I would first direct my argument to the subpoena *duces tecum*.

Now the record for the Court should reveal that in the County court we filed a request for a subpoena *duces tecum*, which motion at that time was overruled and exception was taken to that ruling in that particular Court.

We are now asking the Court for an Order for subpoena *duces tecum* for the items requested in our motion.
page 7 } Section 8 is the authority for this if it is contested. If it isn't contested perhaps I can go right on to the next point.

Mr. Hassan: You needn't worry about contest. I contest your breathing and everything that stems from that.

Mr. Harrigan: All right.

Now Section eight three oh one (8301) of the Code which deals with the subpoena *duces tecum*. That is under the civil section of our Code as we know it.

However, Section 19.1, 262 clearly says, and I might add 19.1, 262 has been amended by a supplement where it states that Section 8.229 and Section 8.296, and 2,301 inclusive shall apply to a criminal as well as a civil case in all respects except a witness in a criminal case shall be obliged in all respects to attend and may be proceeded against for not doing so, although there may not have been any payment tendered to him for attendance mileage.

I think for a subpoena *duces tecum* in a criminal case is so well settled by statutory authority that it would be pointless to keep reading the sections dealing with them.
page 8 } Now there is some authority which says subpoena *duces tecum* for some things is discretionary with the Court.

Our position is that none of the matters which we are requesting is in fact discretionary with the Court but fundamental due process and a fair trial requires that certain matters be furnished on command and that that in effect takes away any discretion for forcing the commonwealth to produce the matter which we have requested.

The Court: Right on that point don't you think 8301 is discretionary in that it says the Court or Judge thereof in vacation, upon notice to the parties adverse to the party requesting the same may order the clerk of court to issue subpoena *duces tecum*?

Mr. Harrigan: That's what I said, Your Honor. I said it's discretionary with the Court.

The Court: I thought I understood you to say it was not.

Mr. Harrigan: What I'm saying is that it's discretionary in the Code, in the language it's discretionary.

But in view of the Brady decision and the Barbee decision which deals with this type of discovery which makes
page 9 } it a due process and I think in light of those cases to refuse the defendant this information would be an abuse of the discretion. That's what I'm saying.

Now with regard to what is discretionary and what isn't discretionary and in light of the cases—and I think we have to look to the cases to see, since this is a criminal case, what is required as a matter of due process to be produced on demand.

Our Constitution in Section 8 states that a man has a right to demand the cause and nature of his accusation, to

be confronted with the accuser and witnesses and to call for evidence in his favor.

Now, that's a rather sweeping language but we believe that the last part, calling for evidence in his favor, is not limited to evidence which he finds himself, but he has a right to information which tends to exculpate him or may be in the hands of the prosecuting attorney that we are not aware of or do not have access to for one reason or another.

Now, there have been several cases dealing with this particular point as to what must be produced. Perhaps the landmark case is *Brady versus Maryland*.

In *Brady versus Maryland*, the Supreme Court—
page 10 } that was decided in 1963, and the citation of Brady
is 373 U. S. 83—

The Court: (interposing) You don't happen to have the Supreme Court report on that, do you?

Mr. Harrigan: I might have.

The Court: If you don't have it handy, that's all right.

Mr. Harrigan: (continuing) 373 U. S. 83— and it doesn't have a Supreme Court report.

The Court: All right.

Mr. Harrigan: I thought I had it here.

Now *Brady v Maryland* that was a case in which there were two defendants and one of them was questioned and stated in effect—it was a murder case—and he was the one that actually committed the murder and the other guy was there aiding and abetting.

The second guy was convicted and the prosecuting attorney, or the State's attorney I believe they call them in Maryland, did not inform the first particular individual as to the confession that the second man had made and did not make it available to him for trial.

The first man was convicted and sentenced and he appealed on the ground that even though that particular information may not have been sufficient to render a guilty verdict against him, prejudicially it was *prejudicial* in that it went to punishment and if the jury had been aware of it very possibly they would not have recommended the death penalty.

And they reversed that case for a hearing on punishment only.

Now our own Fourth Circuit since then had decided the Barbee case, which is very much—and the Barbee case is 331 Federal 2nd, 832.

This is a case where there was a *habeas corpus* wherein the person was charged with shooting a police officer and at

the trial the U. S. attorney produced a gun which had been found in the possession of Barbee. They never introduced it into evidence.

Now the gun had been taken from Barbee and it had been run through ballistic tests and finger print tests and so forth and they came back negative and the U. S. attorney did not inform the defense attorney for one reason or another as to those particular facts.

The Fourth Circuit reversed and its opinion, basically, the State argued four particular things in that case:

page 12 } “(1) that the undisclosed evidence had any probative value;

“(2) that his counsel ever asked that the results of the tests be revealed to him or the court;

“(3) that the prosecuting attorney had any knowledge of the existence of the reports; or

“(4) that any prejudice resulted from the nondisclosure.”

And the Court in dealing with those particular offenses said in its opinion that:

“That the police reports in question had substantial evidentiary significance is made plain by the testimony of Lieutenant Epple of Police Department Crime Laboratory at the federal *habeas corpus* hearing. He stated that Barbee's fingerprints had been submitted to the laboratory for comparison with those found on the automobile driven by Officer Fisher's assailant, and the results were negative. In addition, he read from the ballistics report an account of the police investigation of the crime and the discovery of
page 13 } two spent bullets, one retrieved on the street near the call box, the other found in Officer Fisher's false teeth. From the tests performed on these bullets and the test shots fired with Barbee's revolver, the police report concluded that this weapon was 'not wanted in any pending cases in our file.' Lieutenant Epple specifically testified that, according to this report, neither of the bullets could have come from Barbee's pistol which the prosecutor had presented in court 'for identification'. His testimony was that Barbee's gun was a .32 calibre Iver-Johnson, while one bullet recovered from the automobile at the scene of the shooting was .38 calibre, and the object recovered from the officer's false teeth was described as 'a part of a bullet' with no further description as to its calibre or otherwise.

“(1,2) In our view, all of this evidence tending to exculpate the petitioner became highly relevant the instant his revolver was produced in open court, formally marked for identification, and witnesses interrogated about page 14 } it. Presenting the gun, without explanation or qualification, could not fail to suggest an inference that this was the weapon used to commit the offense for which Barbee was on trial. If this was not meant to be suggested, there was no reason, indeed no justification, whatever for its formal production at the trial. Once produced, it became not only appropriated but imperative that any additional evidence concerning the gun be made available either to substantiate or to refute the suggested inference. If the pistol was pertinent for any purpose, so also was the opinion of the ballistics expert that it was not the weapon used in the Fisher shooting. We cannot say that the trier of the fact would have given no weight to the ballistics report or the expert's testimony. As Judge Edgerton said in *Griffin v United States*, 87 U. S. App. D. C. 172, 183 F. 2d 990, 993 (1950) :

“(T)he case emphasizes the necessity of disclosure by the prosecution of evidence that may reasonably be considered admissible and useful to the defense. When there page 15 } is substantial room for doubt, the prosecution is not to decide for the court what is admissible or for the defense what is useful.”

Now, with regard to the second point.

The Court: Mr. Harrigan. Is that a case that came out of a *habeas corpus* from a trial originally in a state court or is it an appeal?

Mr. Harrigan: This is a state court. *Barbee v Maryland*.

Mr. Hassan: How did the United States get into it?

Mr. Harrigan: It says *habeas corpus*—

Mr. Hassan: It says the State's attorney got it and did not introduce it into evidence.

Mr. Harrigan: They call them State's attorney in Maryland.

The Court: Just a moment.

Mr. Hassan: He's stuck with his own business here.

Mr. Harrigan: And I'm sticking with it.

In Maryland unlike Virginia where they call page 16 } them Commonwealth attorneys, in Maryland they are called State's attorneys.

Mr. Hassan: I don't accept him as an authority.

The Court: Just a minute.

I'll hear him, then I'll hear you.

Mr. Hassan: I object.

The Court: The objection is overruled.

Mr. Hassan: Exception, please.

Mr. Harrigan: In Maryland what they call in Virginia a Commonwealth attorney, is called by them a state's attorney.

But in any event aside from the semantics involved here the case was a *habeas corpus* proceeding attacking a conviction in a state court.

The United States District Court for the district of Maryland in Baltimore decided it and the petitioner appealed. From the Court of Appeals it was held that the prosecution for an assault with intent to kill and unauthorized use of an automobile, wherein defendant's revolver was offered for identification purposes only and several witnesses made partial identification as being weapon used in shooting, reports of ballistics and fingerprint tests made by the page 17 } police department which tended to show that a different revolver was used and to exculpate defendant, were relevant and the prosecution should have disclosed their existence.

So this a *habeas corpus* in a state—

Mr. Hassan: (interposing) I'm going to ask the Court to ask him to reread where it says the United States attorney presented the gun.

Mr. Harrigan: I think he has a chance to argue his case.

The Court: Well, all right.

Mr. Hassan, I'll take that as an objection.

Did you say the United States attorney?

Mr. Harrigan: If I said the United States attorney, it was a slip of the tongue. I meant the State's attorney.

The Court: They were ruling in a state trial, the state's attorney?

Mr. Harrigan: That's correct.

Mr. Hassan: I want the record to show that defense counsel purports to read from the case and then inserts words or deletions.

He inserted the words "United States attorney."

If you're not going to read accurately then you page 18 } ought not to lead the Court to believe that you are reading.

The Court: I'll read the case, Mr. Hassan. If he made a slip of the tongue, he corrected himself.

Mr. Harrigan: Now the second point they made was that although the defense attorney did not request the information, he was still entitled to it, in that they said:

"It is no answer that Barbee's attorney failed to ask for the results of the tests. While a diligent defense counsel might have learned about the police reports, this is too speculative a consideration to outweigh any unfairness that actually resulted at the trial. He may not have known that tests were made. Indeed he may have been misled into thinking that the tests, if made, supported the state's theory and were adverse to his client, and that otherwise the State's Attorney would not have produced the gun in court."

This is not a case where defense counsel merely made a wrong calculation. It's a case where it infers strongly:

page 19 } "This is not a case where defense counsel merely made a wrong tactical calculation; it is a case where the inference strongly projected by the state's evidence might have been destroyed by other evidence in its possession but which the police concealed from the court, from defense counsel, and perhaps also from the State's Attorney. In gauging the nondisclosure in terms of due process, the focus must be on the essential fairness of the procedure and not on the astuteness of either counsel."

Now the third point.

The Court: I take it Brady dealt with the use of false testimony by the prosecution or at least their failure to correct it when they discovered the error; and Barbee dealt with the matter of nondisclosure of exculpatory matter and not any false or perjured testimony?

Mr. Harrigan: That's right.

I don't think Brady went as far as to put in false testimony.

page 20 } Mr. Hassan: Brady withheld the statement of a co-defendant. All statements except one was given to the defendant. And one was withheld, a co-defendant's statement.

Mr. Harrigan: So I don't think it was false testimony in the Brady case. It was just withholding evidence which may have benefited the defendant.

And in the Barbee case they then went on to hold in effect that even though the State's Attorney was not aware of certain evidence that that was no justification and that it should have been produced or given to the defendant, or should have been produced for his use.

The Court: On the thinking that the police department was a part of the prosecution and this was not of the police—

Mr. Harrigan: (interposing) Apparently that is the thinking because there's no other way to get it unless the police produce it through the State's Attorney because they won't give it to you unless they go through him.

Now, then, they dealt with the question of whether—they said it didn't have to be produced because there was no showing of exculpatory material.

page 21 } The Court in dealing with this particular object:

"Nor is the effect of the nondisclosure neutralized because the prosecuting attorney was not shown to have had knowledge of the exculpatory evidence. Failure of the police to reveal such material evidence in their possession is equally harmful to a defendant whether the information is purposely, or negligently, withheld. And it makes no difference if the withholding is by officials other than the prosecutor. The police are also part of the prosecution, and the taint on the trial is no less if they, rather than the State's Attorney, were guilty of the nondisclosure. If the police allow the State's Attorney to produce evidence pointing to guilt without informing him of other evidence in their possession which contradicts this inference, state officers are practicing deception not only on the State's Attorney but on the court and the defendant. 'The cruelest lies are often told in silence.' If the police silence as to the existence of

page 22 } the reports resulted from negligence rather than guile, the deception is no less damaging.

"The duty to disclose is that of the state, which ordinarily acts through the prosecuting attorney; but if he too is the victim of police suppression of the material information, the state's failure is not on that account excused. We cannot condone the attempt to connect the defendant with the crime by questionable inferences which might be refuted by undisclosed and unproduced documents then in the hands of the police. To borrow a phrase from Chief Judge Biggs, this procedure passes 'beyond the line of tolerable imperfection and falls into the field of fundamental unfairness.'"

So whether the State's Attorney knows about the information or reports or not have very little or no bearing on whether they ought to be produced.

Then the question of whether we have to show some prejudice. The Court dealing with that particular problem said:

"With respect to the necessity for a showing of prejudice, the cases sometimes draw a distinction between

page 23 } the knowing use of false testimony and the passive nondisclosure of exculpatory evidence. In the first type of case the sentence will be set aside without inquiring into whether the defendant has been prejudiced, while in the latter some consideration of the possible effect of the irregularity upon the fairness of the trial is necessary. How strong a showing is required in a given case will depend on the nature of the charge, the testimony of the state, and the role of the undisclosed testimony would likely have played."

Then they go on to quote a Supreme Court case, *Fahy v. Connecticut*, 375 U. S. 85, 84 Supreme Court 229. And in that it was a case I believe of a painting of spot stickers on a church and they found some paint.

They stopped the man and saw the paint and went in and searched his house.

In that case, they said:

"In the present case, where evidence was withheld by the police which had a direct bearing upon and could
page 24 } reasonably have weakened or overcome testimony adverse to the defendant, we will not indulge in the speculation that the undisclosed evidence might not have influenced the fact finder. "The question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction."

And then they go on to cite a footnote which says:

"In many cases the most damaging evidence against defendants are the fingerprints on a weapon, a scientific report on bloodstains, a ballistics test or any *autopsy* report. Even if these reports may not be admissible at trial, their results often prove innocence as well as guilt, and for that reason, may be quite vital to the defense for impeachment purposes. The state has unlimited access to modern scientific aids and it is making more and more use of these devices. The defendant is often innocent and generally cannot afford
page 25 } to make independent tests on his own. Grave injustice may be done if scientific studies which tend to show innocence are never made known to defense counsel and are never introduced at trial. Because of the great probative value of such tests or reports * * * (they) should be freely discoverable."

Mr. Harrigan: This case was reversed based on the non-disclosure of that particular evidence.

Now the Barbee case also says that the—

The Court: (interposing) It wasn't reversed. It was a Federal *habeas corpus* granted in the Fourth Circuit.

Mr. Harrigan: That's right.

The Court: It never got to the Supreme Court.

Mr. Harrigan: Barbee did not get to the Supreme Court; Brady went to the Supreme Court.

Now in the light of that particular case and in light of the Brady case—I'm now tying in the Brady and the Barbee case—we have asked for certain scientific reports; we have asked for certain ballistics photographs; we have page 26 } asked for certain reports or any analysis made of the clothing taken from the defendant, and whether they do not show powder burns existed on certain things and what tests were made to discover that.

I think at the pretrial hearing there was certain evidence—

The Court: (interposing) Let me make a comment here. A gentleman just came in from the press.

(Whereupon, a admonition of the Court was given.)

The Court: Go ahead, sir.

Mr. Harrigan: Now in light of the Brady and the Barbee case on our subpoena *duces tecum* we want to request police tapes which are presently in the custody of the police department which we have not had access to which involved the time span from the time that Rockwell was killed until the time that Mr. Patler was apprehended which we believe was some twenty-five or thirty minutes later.

We are asking for purpose of this motion to suppress on the grounds of illegal arrest and these tapes are page 27 } particularly relevant because they broadcast the description or how many descriptions were in fact sent out.

The Court: These would be tapes of the broadcast from the central station?

Mr. Harrigan: That's correct.

And if necessary we'll put on evidence as to where they are. I think probably Inspector Cole ought to know.

Then, we're asking for notes made by the arresting officers taken from witnesses which may tend to exculpate the defendant which show a different description given by witnesses at one time or another and police reports concerning statements of these particular witnesses if any are avail-

able and the original notes or statement of Robert Lloyd, which was the acknowledged owner of the murder weapon at one time.

And we're asking for any statement which they may have taken from the defendant either orally or taped.

In light of the Barbee case and in light of the preliminary hearing which we have a transcript on where they did testify that they conducted certain tests and certain things did not show up; for example, any powder marks on the towel which the defendant was wearing.

page 28 { We're asking for the scientific analysis they made on the clothing they took from the defendant; that would include the report on the coat and hat which was apparently found on Larrimore Street; what scientific analysis they made on that and what they found, which we would contend would exculpate or point to some other person such as the analysis of any hair found on the hat or any powder marks found on the coat.

Now they seized the defendant's shoes and there was some discussion at the preliminary hearing that there was some tar on one of his shoes. If there has been an analysis made on that particular tar and the tar on the roof or the tar in the city's streets we would like to know what that analysis uncovers since we have absolutely no access to that. They have the shoes and they have the tar so we don't know what's on his shoes, whether it came from the street—and I'm sure at the preliminary hearing which the transcript will show if we can introduce it into evidence—that there was testimony from a police officer that he had tar on one shoe when they arrested him and there was testimony there was tar on the roof; that's all there was.

There wasn't anything else, and I anticipate page 29 { the same kind of testimony will be introduced at trial. The obvious inference is going to be that the tar came from the roof. They may well have some scientific analysis to indicate that that was not the case at all.

That's why I'm asking for that analysis. It's very similar to the gun in the Barbee case. They found the gun on him and showed it around the Court and the ballistics showed it wasn't the one at all. Nobody knew about that.

Then we're also asking in the subpoena for the ballistics reports and photographs which they compared the ballistics reports with so we could have someone look at them.

Now, in this particular case, in this motion, we're asking for evidence which may tend to impeach witnesses of the

commonwealth which the commonwealth had access to, and no doubt has. If they don't, the F. B. I. certainly does, and the F. B. I. is working very closely with the commonwealth on this case.

Since we're dealing with members of the Nazi Party, and many of them, we're asking that they furnish us with a list of criminal records on these witnesses that page 30 } they intend to call and also information concerning any psychiatric reports which the F. B. I. may have or the Commonwealth Attorney in his possession regarding these witnesses. An example of that is the testimony of Mr. Robert Lloyd at the preliminary hearing who had the gun—well, who owned the gun, and testified that he loaned it to Patler some two years ago and hadn't seen it until the day after the murder.

He also testified that he had seen a psychiatrist. He also testified that he was taking certain pills, he said under a doctor's care. I think maybe the F. B. I. or possibly Mr. Hassan may have that information, that that is not exactly so and that if they do have such information that he is—if they have a psychiatric report on him or other information which would tend to show the guy was a dope addict I think it would be highly relevant and go toward the credibility of the witness on the stand.

We are entitled to that in view of his testimony downstairs where he intimated that those things existed. As far as his criminal record, I think we should have access to the criminal records of the particular people at party headquarters, Nazi Party Headquarters up there. page 31 }

I think it's well known that almost every single one of them at one time had been in jail and they even give medals at Nazi Headquarters for jailtime; that there was a price on the medal they got—it depended on how much time they spent in jail.

Since we're dealing with that type of people and this is the type of testimony coming on the stand, I think we're entitled to know the background as far as they have it or as far as the F. B. I. has it concerning these individuals. It would certainly go a long way to impeaching their credibility on the stand.

Now we're asking also for any announcements, letters, or death-threat letters which were written to Rockwell and which are believed to be in the hands of the F. B. I. because of the testimony downstairs that the more severe ones they turned over to the F. B. I. We believe they have those letters.

I believe that these letters will show that this was not just

another individual man off the street that got shot; that he would get hate mail and threats to kill him by the hundreds.

And this would tend to show that somebody else
page 32 } had a motive also to shoot this particular man.

Now we've asked also for any information based on wiretapping or other electronic devices. We have no knowledge that there was any information on anyone of that type; however, we're specifically asking for it. It wouldn't be the first time that such a thing occurred in Arlington, or by the F. B. I. or if anything—now when we say electronic device, we are also referring to this new device that they put on the telephone that they don't record the voice, they just record the number that is calling or record the number that is calling you. If there was such a device on anyone's phone involved in this particular case I'm sure the police have knowledge of it and the telephone company has knowledge of it.

There's some speculation that it is not illegal in these parts. So in view of the other case, namely the Ragen case, and there was a wiretapping in that particular case, I think we have cause to believe such a condition may exist in this one.

Now the third part of the motion is asking for evidence,
which we don't know if it exists or not, but if it
page 33 } does exist we think that we have a right to certain types of evidence and that they have a duty to furnish it.

Whereas, in the Brady case where they hold, and the court quotes:

"We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

In the light of that holding, we are asking if the police have talked to—and they've had many policemen investigating this thing—any witnesses which gave descriptions of this particular assailant that was contrary to the description that we know about or was testified to by Inspector Cole or was in the paper.

We believe we have a right to discover who that person is and have a right to question him and find out what he said regarding the description.

This is particularly important in view of the fact that we
believe that certain witnesses were talked to by
page 34 } the police and were informed *truthfully* or otherwise

not to talk to defense counsel or to defense counsel's investigators, one of them being Mr. Stuart on Wilson Boulevard.

His testimony is in the record and I believe his testimony will reveal that he was told not to discuss the case with anyone unless they had a badge or showed their credentials.

Now the third thing we would like the commonwealth to disclose to us is what witnesses were taken over to police headquarters shortly after Mr. Patler was picked up and sat in the hallway while they walked Patler through for identification of sorts.

In light of laid down decisions involving line-ups, especially one-man line-ups, I think it's highly important in this particular case and we may never know about it until the witness testifies on the stand. I think the disclosure of those particular people and whether they did or did not, or more particularly did not, identify him as the man that they saw or did not see, I think it's highly important to us.

Now, we're asking also for certain information in the possession of the police department or Commonwealth
page 35 } Attorney for certain items taken from Nazi Headquarters. These items would be, one; a gun listing which lists the guns in the possession of various members up there; and more specifically the gun listing on this 7.63 Mouser which is believed to be listed to Robert Lloyd. We have not had access to those.

This is a file which was kept by Nazi Headquarters, or their own files which were turned over to the police which is now we believe in their possession.

The Court: That's the gun listing you're speaking of as a record that the Nazi's kept as to who had what gun?

Mr. Harrigan: That's correct.

And I also think the police would have some record of who had what gun in their files down here and if they do we would like access to that because we believe it's clearly going to show that the gun was never listed to John Patler.

That gun was bought and paid for and listed to one Robert Lloyd.

Now we also have information, and we heard it over the radio, that some other person had confessed at
page 36 } one time to this particular crime. If the commonwealth has information along that line I think we are entitled to know who this someone was and when he confessed and where he is at this point.

Now, much of this information is in the hands of the Federal Bureau—the F. B. I., and we ask—I believe Mr. Hassan

has access to all of this and it all could be furnished upon request by him.

In view of the nature of this case, and I believe there has been some information that the F. B. I. kept this particular Party under some surveillance almost constantly through one method or another, and we ask that they furnish whatever information they may have concerning the status of the main witness anyway, this Robert Lloyd, and the names of these particular F. B. I. men who are involved in this, their names at least, be given to us for the purpose of subpoena.

That's all.

The Court: All right, Mr. Hassan.

Mr. Hassan: If Your Honor please, first of all as to the Brady case, the Brady case does not resemble in its facts or rulings anything that I think could be conjectured or dreamed of even on an L. S. D. trip that relates
page 37 } to the matter here.

The only thing that comes along that might bring the Brady case in is this number sixteen request, information which was on the radio according to Mr. Harrigan that some other person confessed because Brady is the concealment of a confession of a co-defendant.

Now the strange thing about that radio call is that Mr. Harrigan asked me about this and I have had an extensive investigation made at a great deal of inconvenience to my newspaper friends, my detectives, and my radio friends, and the only thing I can find out is that the only one who ever mentioned such a call was the defendant.

I know of no confession and I know of no such radio release; nor does any radio station or T. V. station in the area.

Now if they want this type of information they should be asking for a *duces tecum* from them. Why don't they *duces tecum* the radio station where the information came from?

We have no knowledge of it and if the court ordered it it would be an exercise in futility because we don't
page 38 } have it.

Now, as to the Barbee case, this is there a case of the defendant putting the cart before the horse. The Barbee case is a case that results when certain things were done and not carried through, creating an inference. They were wrong. There isn't anything in the Barbee case but a mess of dictum with the exception of the fact that some prosecutor, which Mr. Harrigan said was a United States Attorney then said it wasn't, produced a gun never introduced in evidence.

I've tried cases a long time and he has never nor can anyone find a case where in Arlington County anything was waved in front of a jury that wasn't introduced into evidence and wasn't completely covered. And he can't complain about this under Virginia law until it happens. He can't bring it up; he can't conjecture it. He can complain if and when it happens.

Now this whole *duces tecum* motion is nothing but a motion for a bill of particulars dressed up in fancy language, dressed up in seventeen items of conjecture and dreamed up possibilities without a centilla of proof that they exist except insofar as they have already been disclosed to him in the preliminary hearing.

page 39 } There are two leading cases in Virginia, both of which are of extreme interest, in the light of the dress-up and both I believe are trying to be avoided.

The leading case in Virginia is *Casper v. Danville*, 160 Virginia 929; and in one short sentence I can sum that entire case up with its long discussion and it comes from the report: The prosecutor is not required to file a pleading laying bare the entire case. It's just as simple as that.

And that applies to Section 8 of our Constitution also. And that case today is followed. That case has been discussed in the A. L. R. That case has been distinguished from and has never been overruled and is the leading case of what is required in the way of particulars from the commonwealth.

The next case is what is necessary in particular in a murder case and that's *Hevener v. Commonwealth* in 189 Virginia 802.

If there were any weaknesses in the details required they have now been supplied by the stenographic report of a rather extensive and complete fishing expedition which was called a preliminary hearing, and it's on record, and produced.

page 40 } There can be nothing they've asked for, nothing that exists, that they haven't, that *they're* not received and no *duces tecum* should be issued against the commonwealth.

In the first place the statute referred to does not in any way infer, nor do the cases, that the subpoena *duces tecum* is to be issued against the commonwealth.

It says in criminal cases it can be issued against a witness. The commonwealth is not the witness. If there is some document or some testimony in the hands of a witness, the statutes are applicable giving the protection of *duces tecum*. But they do not extend *duces tecum* to lay bare the file of the

prosecution nor do they intend that *duces tecum* should be granted on the mere conjecture and dreams of a defendant's counsel. There has to be some *centilla* of relation and some possibility of existence.

They have requested the items of a broadcast, the radio dispatch. Those are available. There isn't any reason—

Mr. Harrigan: (interposing) I object to that, page 41 } that they're available. But they're not available to us and I defy Mr. Hassan to represent to this court that he has given us an opportunity to look at those tapes.

Mr. Hassan: I deny the allegation that the tapes are not available.

Mr. Harrigan: Then produce them.

Mr. Hassan: I won't produce them. The law doesn't require me to.

They're available to them by subpoena at the trial.

There's no right for them to have this entire file of the commonwealth available to them.

Do they think they could walk off the street and say give me your file and I will take them home tonight and bring them back tomorrow?

Utterly ridiculous.

They're available through proper sources and it isn't the *frivolous* demands of counsel nor the fishing expedition of defense counsel.

The Court: How do they differ in these other things in being available.

Mr. Hassan: When I get through with it there won't be a darn bit of difference in any one of them. page 42 }

They can't get a *duces tecum* on commonwealth. All they had to do was file a subpoena with the communications department to bring his records. He'll bring them over. But no one has to be examined by defense counsel or by his investigators. Everyone is entitled to refuse to talk to them. Everyone is entitled to give his testimony under oath on the stand.

The Court: If they were subpoenaed wouldn't the commonwealth take the position—I'm not binding you on this—but couldn't you take the position if you wanted to that they were part of the work product of the commonwealth in the preparation of its case, being police documents and records, just like witness testimony?

Wouldn't you take the position that the handwritten notes—

Mr. Hassan: (interposing) When I get to that I'll take

that position. But as far as the *res gestae* anyone including the court who thinks the commonwealth isn't going to produce them at the trial is just wasting their time because every bit of that is part of the *res gestae*, right up to the time of apprehension. Of course, they're going to be produced.
page 43 } But there's no right of defense to have them before trial; there's no right to have these before this court under oath. The only right is the court; the court has the right to have them.

Do you think witnesses should be made available to defense counsel and their investigators particularly to be subjected to such things as:

Do you realize what you're saying, you're putting a man in an electric chair?

Are you positive?

Now you must make sure.

A lot of things can come of this.

Is that the way a witness should tell his story? That's what they think. That's what they've done with every identifying witness. They want names, they got them, and they interview them. They had two investigators who have brainwashed every witness who talked to them.

They have a right to talk to them but the witness also has a right to say "I'll tell my story in court, under oath".

The next thing they want is notes of the officers. This, they're not entitled to unless the officer uses them on the stand.

The next one they want is the police reports of statements.

They're only entitled to statements the defendant made and they have them because defendant's counsel sat with him all the time and a policeman was around.
page 44 }

They want a statement of Robert Lloyd. They had Robert Lloyd. He testified and they have a transcript. They've got everything on Robert Lloyd that I've got. I got what I have and they got what they got out of him. There isn't anything they're entitled to that they don't have on Robert Lloyd.

The next thing they want is scientific reports. The property clerk who delivered everything to the F. B. I., Jesse Wissmer, has testified and it's all here. All the items are listed that were submitted to the F. B. I.

The F. B. I. Expert was on the stand. And if they think for one minute that I'm not going to produce every single bit of evidence on this: Mr. Harrigan ought to know better. He worked for me and I would have thrown him right out of the

office had he concealed one thing and he knows it. And to infer to me that I would is a personal thing.

The ballistics, they've got them; as to photographs, they saw them; as to testimony, there it is.
 page 45 } The F. B. I. expert said this bullet which was taken from Lincoln Rockwell and it came from this weapon exclusive of all other weapons.

What more do they want? And this is all, and this is the testimony they have.

Now the proper procedure for a knowledgeable attorney if he's going to have an expert is that he get his expert and his expert goes to the other side's expert and they show each other their exhibits and they go over them with them. I have never known Dr. Enos, or Dr. Beyer, or any F. B. I. expert to refuse to talk to an attorney hired by the defense.

You don't go to inexperienced, unqualified people as the counsel has done to present some unknown person. Let them get their experts and follow the proper procedure for the preservation of the evidence. They know who they are; they've all testified and they know their names. Nothing is hidden from them.

Now, they want me to furnish them psychiatric reports and criminal reports or records for the purpose of impeaching my witnesses. I don't know what kind of a new system of law that is or what it's founded on but it doesn't come
 page 46 } from the common law—and we're still following the common law—it might come from the Nazi law or the Russian law or the daydreams of some inexperienced counsel. But when they expect the prosecution to prepare the prosecution and the defense at the same time they are exceeding the boundaries of sanity.

They want the criminal records of all the Nazis who ever came into this area.

The Court: I notice they did not mention the Giles case in this connection.

Mr. Harrigan: It's in the memorandum.

The Court: I read it.

Do you think the Giles case stands for the proposition that the commonwealth should disclose information which tends to impeach commonwealth's witnesses.

Mr. Hassan: If I had any such information I would use it on them and make them tell it first.

I wouldn't take a chance for some defense counsel to cut me off at the nose, if I knew it. I can guarantee you that. But I don't think because a man had got a criminal record it makes him a poor witness.

Mr. Harrigan: That's not up to Mr. Hassan to decide.

Mr. Hassan: That's not up to Mr. Harrigan to
page 47 } decide either.

I don't think the prostitute is a poor witness in
rape case.

The man might have a record for one thing and testifying to something else. He might be the world's worst man but if he said he owns the gun, which is all Lloyd said other than the fact he loaned it to him, what's that got to do with it? Even if he did or did not own the gun, or even if he had been in a mental hospital.

And then announcements; letters, death letters, apparently to Lincoln Rockwell might be in the hands of the F. B. I. and the postal authorities.

I got some nineteen thousand and some hundred odd votes and I've been practicing in Arlington County as Commonwealth Attorney for over sixteen years, and I don't know why he should *duces tecum* me. The chances are he couldn't get into J. Edgar Hoover's office or the Post Master General's office.

Next they talk of wiretapping and I know and they know
page 48 } that in Arlington County there isn't supposed to be any wiretapping unless it's approved by the County Manager and the Commonwealth Attorney. And this regulation has been in effect a long, long time.

I have yet to approve the first wiretapping and I have yet to receive the first request so I know of no wiretapping and I know that they know of no wiretapping unless they are doing it and I don't know about it.

And then this new machine which tells you what phone number you're talking to. I'd like to have that because I get a whale of a lot of numbers wrong lately. If I had this particular thing I would know that I had dialed the right number or not. It might be helpful. I've never seen or heard of it.

Now as to the witness, Mr. Stuart.

He's got a right not to talk to them but to tell his story on the stand, under oath.

The next thing he wants to know is about witnesses at headquarters. Well, there was no lineup; he knows that. There were several witnesses who had information who were brought to headquarters and who were there at the same time that Mrs. Lane was there with him and that Mrs. Lane walked down the corridor with him.

page 49 } They were there to give their statements of what they saw to the police. This is statements

of those witnesses and they will all be called. He subpoenaed all of them in the preliminary hearing and they all testified.

The next thing he wants is a gun listing of the Nazi Party which he says they have. Why not *duces tecum* them. I am only interested in one gun. I'm not interested in all the guns the Nazi Party has and if he is and he thinks it's material let him get a *duces tecum* against the Nazi Party.

Mr. Harrigan: Now for the record, I didn't say they had them. I said they turned them over to the police, and they're in the possession of the police.

Mr. Hassan: It's their records and if they don't have them let them report that to the court.

I'm positive that he doesn't know what he's talking about.

Mr. Harrigan: Will you stipulate that you don't have copies?

Mr. Hassan: I stipulate nothing except that your snoops have photographic copies.

Then he wants me to give him all the F. B. I. page 50 } information and the name of the Agent who got it.

This is ridiculous. I'm not the head of the F. B. I. I don't know what they've got on Lloyd and that's the only one he asked for information on and he says that's my key witness. My key witness is the defendant himself and his conduct; that's my key witness, not Robert Lloyd. He's just incidental. He's a witness because he knew him. He's only a witness because he had Lloyd's gun.

If your Honor please, there is not a *centilla* of law, recently enacted that changes the basic fundamentals of the Virginia Commonwealth Attorney's position.

There is no authority in the discretion of this court in *duces tecum* to direct one to the Commonwealth Attorney nor to order him by any name whatsoever; bill of particulars, *decus tecum*, or discovery to lay bare his file.

Any order of the court to be so made would be contrary to all of the existing law and decisions that have been made over the years in the State and I will ask you to deny the motion for a *duces tecum*.

The Court: Let me ask you, Mr. Hassan: Do page 51 } you know whether any trial court in Virginia, including this one, has in the past permitted any discovery of commonwealth in a criminal case?

Mr. Hassan: None that I know of.

The Court: (continuing) of exculpatory or discovery or any other information?

Mr. Hassan: Your Honor, I know of none.

There have been many, many occasions when exculpatory

information has come to the attention of the commonwealth and this has always been brought out. I think that's why I'm still here. And for defense counsel to insinuate if I had it I wouldn't show it is a personal insult from a former assistant.

The Court: I don't take his motion as that.

The thrust of his motion is to get this in advance, rather than to have it put on at trial. There's no question the Virginia law requires you to do it at trial and I'm sure you will produce it at trial because we have a number of cases in Virginia requiring the Commonwealth Attorney to bring forth any exculpatory information he has.

It seems to me the question before the court now is not whether or not it should be produced, but should it be produced here or at trial.

page 52 } Mr. Hassan: I've given up my Thanksgiving to work on this. I may have it tomorrow night or Friday, but today I don't have it. I have spent a long time on two pages of points of authority and anticipated facts. If I had it I would make it known, as the court well knows and as well as the defense counsel ought to know.

But I have not yet even prepared a trial brief. I've got three suitcases full of information to work on if I ever get out of here on these motions.

The Court: Mr. Harrigan, do you wish to respond?

Mr. Harrigan: Well, I don't think the question of whether or not he has time or not is here or there. The question comes down to do we have a right to get it.

The recent cases clearly show or indicate that the commonwealth is not to decide what may be exculpatory or what may not.

There are many things in this case that he may not even know about and a prime example of them—maybe he didn't know about it—he had a witness where she said
page 53 } she could identify this man as running by her and then later on she said she never saw his face; that she saw the back of his head and then saw a picture at the police headquarters and then she said she saw a picture and she said it was the guy she saw in the picture.

The Court: I note you have a quotation in your brief from Barbee to the effect that the prosecution is not to decide for the court what is admissible or for the defense what is useful.

What do you take that to mean? Does that mean the court has to look at the whole file and decide what should be in camera as some of these cases say, or what?

Mr. Harrigan: No, just on certain things.

I take that to mean this: and some of the cases go into it; what possible harm could there be in us looking at their scientific reports. I mean, they're there. As the cases say, there isn't any way you can tamper with them nor any way you can change the report.

We believe they do show something based on the preliminary hearing. There isn't any way you can tamper
page 54 } with that and that is what he thinks we do with everything we touch. But there isn't any problem with producing that. The only problem with that is he doesn't want us to see it for one reason or another.

The Court: My question relates to the mechanics, if anything. If your motion should be granted it seems to me there are three possible ways of going at it:

One, the prosecution looks through his file and finds what is exculpatory and what is helpful, and what is material, and gives you just that.

Now the Barbee case says that should not be done. The next thing is:

The court picks it up and looks at all of it and decides what you should see and what you should not see.

That appears to be the Giles case, or one of the concurring opinions.

The third would be simply:

That the entire three suitcases should be taken out and dumped into your office. In other words, you have
page 55 } full discovery of the commonwealth's case.

I cannot see any cases thus far that say that that should be done.

I just wondered what you think is the proper thrust of your motion. Certainly, I don't agree that the remedy, if there is one here, would be effected with number one where the prosecution would look through his file and say, "I don't think this is exculpatory" and just gives you anything he *things* may help you.

The second, if we have these three to go on, is the most obvious one. Now I think that doesn't deal with all forms of discovery. It may deal with certain things that are on the

borderline. I don't know if they're exculpatory or not and I don't think I should have to go through all the files.

Now things like scientific records, I don't think there is any problem there at all.

Mr. Harrigan: I do.

The Court: How do they differ from the other things.

Mr. Harrigan: Because, based on the preliminary hearing in this particular case they're obviously exculpatory to a great extent, at least the testimony from witness stand would indicate they were. And we would introduce that transcript into evidence to support that if necessary.

But we asked them if they found certain things on him; if they found fingerprints on the gun, and they said, no.

We asked him did you find anything else, and he said, well, I'm not the fingerprint man. That was the answer to that.

Then we asked if he went over the clothes, and he said, yes, with a microscope for powder burns.

Then we asked were any other tests made and he said, well, I'm not the fabric man; and so on and so forth.

That's the tenor of the testimony. He didn't find anything, but he's not the fabric man; he's not the fingerprint man, but was standing by the fingerprint man. But his records were confined to ballistics.

The Court: Mr. Harrigan, in that field aren't you protected by two rules? One, that the commonwealth having exculpatory evidence may not withhold it; and therefore, shouldn't you have a case on this point at trial? If he's got it, he's got to produce it at trial.

And, two, you have the right to cross examination of any witness who attends and you can ask him what tests were made and what it showed.

Mr. Harrigan: Then I get the same thing I got the last time.

The Court: All right.

Then, when he's not here today, don't you get the same thing?

And then you could get an instruction that, as a matter of law regarding the prosecution's failure to produce it implies that the testimony was not adverse to the defendant.

Mr. Harrigan: That may be, Your Honor. But that's not half of it. If I looked at these things in advance and they said, yes, we found hair in this thing here and it was blond hair and it definitely could not have come from this man, that's a lot stronger than the testimony. And they just won't infer anything like that.

Mr. Hassan: I'm going to object to this line of argument on this because it's ridiculous. Anytime counsel
page 58 { wishes he may examine the witness. The man is there as a ballistics expert and Mr. Harrigan wants to know everything about it except ballistics.

The Court: It seems to me we've drawn a small circle because I asked him to begin with why is he not protected by two rules. One, that you must produce exculpatory evidence that is *known* to you, at the time of trial; and, two, the fact that he has a right to cross examine and he can fine it out.

Say this is just a ballistics man, and he said, well, there were these clothing tests but I'm not a clothing man. And in the absence of the clothing man it proves or is an indication that his evidence would be unfavorable to the commonwealth.

Now, you could counter by saying that's just a sort of a negative, and it's just an implication which could be used in jury argument. It would be far stronger if the man said blond hair was found and could not have come from this man. But I already answered that. That's exculpatory and Mr. Hassan has to produce it so you're protected although not in advance, just at trial.

Mr. Harrigan: These cases go into a lot of
page 59 { things, one being that perhaps the commonwealth does not know certain things exists. An example of this is Becky Middleton where she testified that she was standing there and a man ran by her. He said, "Do you see that man in the courtroom today?" And she said, "Yes I do" and pointed to this man. Then later on she said, "I never saw his face. The police showed me a picture of him."

They were up to her house eight different times and then brought her down here to testify to something she never even saw. She doesn't know a thing and yet stood on the stand and identified him, and said "Yes, but that's the same man I saw in the police station."

This is what I'm trying to avoid.

Mr. Hassan: If Your Honor please the way to avoid that is to stop going into the home of a sixteen year old and tell her how serious her testimony is.

Mr. Harrigan: You gave help eight times with a—

Mr. Hassan: (interposing) She had given a statement which we had and it was her seeing the back and
page 60 { not being able to identify him but this came after brainwashing by their detective whom she thought was a policeman. After them telling her how serious her testimony would be and asking her about it.

It's ridiculous for him to build a straw man and then tear it down. Who does he think he's fooling. He knows about it, about his visits, and how he got her name.

The Court: The defense also takes the position rightly or wrongly that the commonwealth gets a good first crack at the business and this crystalizes an impression on the witness and then he brings them to the court and there is a courtroom identification which is a direct product of that previous examination. It's what Mr. Harrigan might also call brainwashing.

Now the defense contends, since they ought to get equal time, all the court can do after Mr. Harrigan led me by the hand in a recent case, the Webb case, it seems to me the only thing the court can do is to have an inquiry out of the presence of the jury.

Mr. Hassan: Perfectly fine.

The Court: (continuing) as to what this witness saw and how, to get the witnesses to be sure of the identification of the person and what the person saw at the scene, if there was a good long time to observe the accused at the scene. Then, a lineup even if it is determined illegal may still become harmless and so forth.

The only protection on either side is an interrogation outside the presence of the jury at the trial. But the Webb case seems to require it.

Mr. Harrigan: That was just an example. That is only what could develop.

Everything the prosecution does here is wonderful and everything we do, according to him, is terrible. But I don't think it works that way.

The main thing we have put down under this Brady and Barbee case—and we know they exist and we know they're exculpatory to a great extent and we should be able to look at those reports and find out what their findings were.

They told us what they weren't in the preliminary hearing but they didn't tell us what they were, if they found anything else.

The Court: I take it there are none of these items that the commonwealth voluntarily wishes to make available such as ballistic records.

page 62 } Mr. Hassan: I will voluntarily make available every item they're entitled to have in advance and nothing more.

The Court: All right.

I'm going to go and read the Brady and Barbee case and the two Virginia cases cited by Mr. Hassan.

We can take this up—I'll try to give you a ruling on this before we begin the discussion on the motion to suppress.

(Whereupon, a recess was had.)

The Court: I'm now ready to resume with the Patler hearing.

The Court is of the opinion that the motion for discovery in each of its several parts should be denied.

The defendant is entitled to all exculpatory information that the commonwealth comes into possession of and the commonwealth will have the duty to disclose it to the defendant. But I know of no duty upon the commonwealth to disclose it prior to trial.

If the commonwealth puts on any evidence the defense has the right to cross examine the witness testifying page 63 } and in the case of scientific tests, ballistic tests, and other expert testimony the defendant has the right to cross examine with the aid of its own experts and, if necessary at the trial to permit his expert to hear that testimony and subsequently testify on the basis of what he heard in the court room.

Now this is obviously not as helpful for the defense as pretrial discovery would be. On the other hand, ours is an adversary system and not accusatorial system and the commonwealth would not even seriously contend that it has the right to pretrial discovery of defendant's case or any part of the defense trial or work product of defense counsel. And until the nature of our adversary system is completely dissolved it seems inappropriate that one side be given the right of pretrial discovery of the other which is not reciprocated.

The burden is upon the commonwealth, notwithstanding this rule, to present its exculpatory evidence if it is known to the commonwealth and not to suppress any evidence which may be helpful to the defense but to let it come forward.

Now the holdings in the Supreme Court make it apparent that if the commonwealth should fail in this duty page 64 } the defendant has an obvious right to a new trial upon the discovery of any such evidence that was suppressed because the Supreme Court has held that the knowing withholding of exculpatory information denies the defendant due process. There is additional spur on the commonwealth to make this available.

If the commonwealth then maintains a conviction it would

be seriously jeopardized if the commonwealth had any exculpatory evidence in its file which was not disclosed.

Fishing expeditions such as we now have in our civil practice in Virginia—it seems to me this cannot be done by judicial determination; it must be done by the legislature or the Supreme Court under its rule *makeing* powers.

But the rules of the court in this state, as I find it, would find such a procedure entirely foreign. In my view the protection of the defense in this situation is the commonwealth's duty to bring forward all relevant evidence which it has; and also the right of the defendant to cross examine; and the right of the defendant to comment before the jury as to any evidence which is obviously omitted from the commonwealth's case; and the right of the defendant to an instruction that the omission of the of significant testimony known to be in the commonwealth's possession or obviously available to the commonwealth raises the presumption that the testimony would have been unfavorable to the prosecution.

Mr. Harrigan: Note our exception, Your Honor, to the Court's ruling.

Specifically note our exception—I take it the ruling overrules our request to get the police tapes and the scientific analysis, the nonscientific analysis of the clothing taken from the defendant and all other matters included in the motion that we have argued.

The Court: It overrules the motion for the production of those things for discovery in advance of trial.

Now it does not overrule your right to subpoena anyone you want to come as a witness to the trial.

Mr. Harrigan: Does the ruling overrule the right to subpoena by way of subpoena *duces tecum*?

The Court: No, it does not.

Subpoena *duces tecum* in my view does not lie against the Commonwealth Attorney nor may he be compelled to produce the work product of the preparation of his case. But as to witnesses, subpoena *duces tecum* lies as in any other cases.

The ruling goes only to the pretrial discovery aspect of the defendant's motion.

Mr. Harrigan: All right.

We have one subpoena on the telephone company here. Could we submit this to the court. It's not a part of the argument.

The Court: Defendant's exception is noted on the grounds he stated in oral argument.

Mr. Hassan: Time is getting short and it's obvious that the rules, new rules on discovery—if he has it, I will waive notice and accept notice now because you can now accept notice of subpoena *duces tecum* on the other side. Tomorrow is another holiday, so I'll waive notice on that *duces tecum* if he already has it here.

The Court: All right.

Now are you ready to proceed on the motion to suppress.

Mr. Hassan: I would like to have witnesses excluded.

The Court: Does the defense have any objection?

Mr. Harrigan: No.

page 67 } We are ready to proceed on the other motion.
Briefly the other motion can be broken down into basically three points.

The first motion that we'll deal with is a motion to suppress evidence as a result of defendant's illegal arrest. We will present evidence that the arrest—that the defendant was in fact arrested without *propoer* cause and request the arrest be declared illegal and all the rest of it.

Secondly, regarding the request—

Mr. Hassan: (interposing) If your Honor please, I would like to take these separately. These are entirely different witnesses and matters and I think we could dispose of them quicker if we handle them that way.

The Court: Well, he's making sort of an opening statement, but I think you're right.

Mr. Harrigan: That's what I intended to do.

Secondly, there was a search warrant and—affidavit and search warrant issued for the residence at 2522 Lee Highway, which place was searched and certain items were taken.

On the grounds of the motion regarding that
page 68 } we are moving to suppress evidence as a result of that search warrant on the ground that the affidavit is insufficient on *it's* face. They were there with a search warrant issued on the basis of an affidavit sworn to in Highland County and we are alleging that the affidavit was insufficient for the search warrant and we have evidence to that effect.

We would like to proceed first on the motion regarding the arrest itself.

Mr. Hassan: I would prefer that we start with the Highland County motion first.

Mr. Harrigan: It's my motion, Your Honor.

Mr. Hassan: He hasn't subpoenaed any witnesses on that.

Raymond S. Cole

He probably figured it would be thrown out before he gets started.

Mr. Harrigan: The first witness I would like to call would be Inspector Cole.

Whereupon, RAYMOND S. COLE, was called as a witness by defense and having been previously sworn was examined and testified as follows:

DIRECT EXAMINATION

page 69 } By Mr. Harrigan:

Q. Would state your name please, and your occupation?

A. Raymond S. Cole; Inspector of Police.

Q. Were you inspector of police on the 25th day of August, 1967?

A. Yes sir.

Q. Now calling your attention to around 11:50 to 12 o'clock, where were you that day?

Mr. Hassan: Objection, Your Honor.

He must establish the *corpus delicti* and let's get to the arrest, that's what he's here for to show whether there was probably cause for an arrest.

I would like him to establish the *corpus delicti*. Did this man make an arrest? If he didn't, then I don't think he's got any more questions to ask him.

Mr. Harrigan: I know perfectly well what I'm doing and I don't know what he's talking about a *corpus delicti*. And I think I have a right to proceed into it.

The Court: Objection overruled.

Go ahead.

Mr. Hassan: Exception, please.

By Mr. Harrigan:

page 70 } Q. All right, Inspector Cole.

On the 25th day of August, 1967, between the hours of 11:20 and 12 o'clock where were you?

A. I was on the third floor of the police building.

Q. Now did there come a time when you responded, got a call to respond to Wilson Boulevard?

A. Yes sir.

Q. Approximately what time was that?

Raymond S. Cole

A. Approximately 12—let me correct that statement.

I did not get a call to respond; I was notified there was a shooting at the six thousand block of Wilson Boulevard and it was notifying me to that effect. I left the third floor to respond or to go to that location.

Q. Okay.

Now on that call regarding a shooting, at that point did you know who was shot; did the call specify who was shot?

A. Yes sir, because the call came out—this I copied from the sqawk box, the radio receiver in the office of the chief.

Q. All right.

page 71 } A. (continuing) And I think it was Sargeant Kadel's voice I heard and they were calling to notify me of the shooting and as I recall, sir, they said that Rockwell had been shot. I believe that's right.

Q. Is that your recollection?

A. Yes sir.

Q. All right.

Now in response to that particular call what did you do then?

A. Captain Weekly was with me at the time. Captain Weekly was with me at the time in his office on the third floor and we both left, and I started up—I left the police building and started up Wilson Boulevard.

Q. Were you alone?

A. I was alone.

Q. Were you driving a police car?

A. Yes sir.

Q. Was it a marked car or an unmarked car?

A. Mine was an unmarked car, sir.

The Court: Excuse me.

Inspector, did you say Captain Weekly was with you?

The Witness: In the third floor of the police department, yes sir.

page 72 } The Court: But did not go out with you?

The Witness: No.

He went in his own car.

By Mr. Harrigan:

Q. When you left where were you going at that point?

A. When I left headquarters I was going to sixteen hundred block of Wilson Boulevard.

Q. Sixteen Hundred or—

A. Six thousand Wilson Boulevard.

Raymond S. Cole

Q. Six thousand. All right.

Now, which direction did you take out of police headquarters?

A. I went to Wilson Boulevard and made a left turn from the court house here.

Q. And you headed down Wilson Boulevard?

A. Down Wilson Boulevard towards Clarendon; west-bound.

Q. Did there come a time when you changed your direction and headed somewhere else?

A. Yes sir.

Q. Now, where was that that you changed your direction?

A. That was between the court house area and
page 73 } the Clarendon area because I went out Wilson
Boulevard and instead of continuing on I went
out Washington Boulevard.

Q. All right.

Now what prompted you to go out Washington Boulevard? Did you receive another radio call?

A. Not necessarily to me but it was a radio call to all units.

Q. To all units?

A. Well it was information which just came out to all units, right. That was on the air so we all could receive it.

Q. What was that information?

A. Information came out then that a subject crossed in the area of Four Mile Run in the area of Bon Air Park and should come out in Westover on Washington Boulevard near Patrick Henry Drive.

This was—this call was on a radio by Officer Wolfe as I recall.

Q. Now, that was what the message said, that a subject had crossed Four Mile Run in the area of Bon Air Park and should come out around Patrick Henry Drive?

page 74 } A. Washington Boulevard and Patrick Henry
Drive; right.

Q. All right.

Now was there any description that came with that same radio broadcast?

A. Description came—yes, sir. Not with that same one, no sir. We had a description prior to that. I had already picked up a description prior to that time.

Q. I see.

Raymond S. Cole

Where did you pick that up?

A. Mr. Harrigan, I'm trying to think.

There was two or three different descriptions which came out. One came from our dispatcher.

Q. What was the first?

A. The first description as I recall: "subject wearing dark trousers; dark coat" and the second one I think included the same, about the same description as I recall.

Q. The second was dark trousers and dark coat?

A. Dark coat, yes sir.

Q. So it's fair to say the second and the first were just about the same?

A. Just about the same.

page 75 } Q. Dark trousers and a dark coat?

A. Yes sir.

Q. All right.

Now did you get a third description?

A. No sir.

Q. No third description?

A. Nothing other than that. I gave a description later on from what I saw.

Q. All right.

But this is what you heard?

A. Yes sir.

The Court: Those two descriptions; both came out of the broadcast?

The Witness: Yes sir.

Judge, may I explain that please?

The Court: Yes sir.

The Witness: In one case the dispatcher put out a lookout from what he had received apparently from a citizen on the scene. The second broadcast was from a unit on the scene back to the dispatcher and back from the dispatcher to the other units.

The Court: Could you hear it or just hear the re-broadcast?

page 76 } The Witness: I could hear both ways.

By Mr. Harrigan:

Q. Both descriptions were—

A. (interposing) Pretty well the same, yes sir.

Q. All right.

Now—

Raymond S. Cole

The Court: Hold it just a minute.
The jury is coming back with a verdict on another case.
We will recess the Patler hearing for a few minutes.

(Whereupon, a short recess was had.)

The Court: All right.
Counsel ready?
Mr. Hassan: Yes, Your Honor.
Mr. Harrigan: Yes, Your Honor.

By Mr. Harrigan:

Q. Now after you received those radio calls did you receive a call to proceed—strike that.

Did there come a time when you reached above Clarendon and then proceeded down Washington Boulevard?

A. Yes sir.

Q. All right.

page 77 } Q. Now, where were you going when you proceeded down Washington Boulevard?

A. Going to the Westover area to the area of Patrick Henry Drive.

Q. All right.

And what was your intentions when you were going to Patrick Henry Drive or in the area of Patrick Henry Drive?

A. I was going to look for the subject that had run into that area.

Q. What method were you going to use? Were you going to cruise the area?

A. Right sir.

Q. Now as you proceeded down Washington Boulevard did you go all the way to Patrick Henry Drive?

A. No sir.

Q. How far did you go?

A. Roughly I went, at that time I went as far as Jefferson Street which is about three or four blocks from Patrick Henry Drive.

Q. Three or four blocks?

A. Yes sir.

Q. Now prior to getting into Jefferson Street,
page 78 } did there come a time when you observed an individual?

A. Yes sir.

Raymond S. Cole

Q. And where did you observe this particular individual?

A. At Washington Boulevard about Ivanhoe Street, sir.

Q. All right.

And Ivanhoe Street, that is how many streets up from Jefferson Street?

A. One block up sir.

Q. And that would be about how far from Patrick Henry Drive to Ivanhoe?

A. Three or four blocks. I don't know exactly.

The Court: Ivanhoe would be east of Patrick Henry Drive?

The Witness: Yes sir.

By Mr. Harrigan:

Q. All right.

When you observed this individual which side of Washington Boulevard—strike that.

When you observed this individual where was he exactly when you first saw him?

A. He was on the north side of Washington
page 79 { Boulevard walking east or toward Glebe Road
at just about Ivanhoe Street, maybe just a little
bit beyond the intersection, but very little.

Q. When you say the north side of Washington Boulevard—

A. (interposing) I'm using—go ahead, I'm sorry.

Q. Go ahead.

A. I was using Washington Boulevard as running east and west and the side street as north and south.

Q. Now the north side of Washington Boulevard would be the other side of the street, the opposite of the street that Bon Aire Park is on?

A. It would be across Washington Boulevard, yes sir.

The Court: Now let me interpose this:

Does this particular place on Washington Boulevard opposite Bon Aire Park—in other words, does Bon Aire Park come up south side of Washington?

The Witness: Bon Aire covers even beyond that point, I suppose. Bon Aire Park starts in above McKinley Road and goes down beyond that where we were.

page 80 { The Court: So the answer to my question is
"yes"?

Raymond S. Cole

The Witness: Yes.

Mr. Hassan: Do you want me to get a map I have prepared and get it up here for the purpose of this?

The Court: That would be very helpful.

The Witness: Any description—

The Court: Wait a minute.

Can counsel hear this? Witness wants to volunteer something.

Maybe you better wait for a question.

The Witness: All right.

Mr. Hassan: Your Honor, this is a complete map of the whole area from the arrest down here (indicating) back up to here (indicating) to where this occurred, and then each section of this is broken up.

This is the Park and this is the area that Inspector Cole is talking about and this is Dominion Hills area that is broken up out of this map, all of which is to scale showing the entire situation and I think the court can follow it if Inspector Cole would get down and show where he was and what he saw.

These yellow areas are locations of where Mr.
page 81 { Patler was seen by Inspector Cole and by others.

This is made by Lieutenant Fuchsman, if you want him sworn.

We probably would have to go through that Monday.

Just so we know, I see these are street addresses or houses which come into testimony. These dots are various witnesses and places which they saw an individual in this cause; and in the red is where they saw the man they're going to testify was running and these green circles are the people who saw them. And we have a complete ledger on that, and each one of them as they come along. And then these—this is where Rockwell was. This is where the coat and hat were found, and this is where the gun was found.

The Witness: This is where I was trying to get to in the Park.

Mr. Hassan: The matter of actual fact, Your Honor, is what you purchased for Route 66 and which extends the park because they haven't built you a route 66 and it comes clear up here to 9th Road North and this is Jacksonville Street, I believe. This may be Jefferson.
page 82 {

The Witness: This is Jefferson.

Mr. Hassan: Jacksonville and Jefferson run in here together. This is Jefferson over here (indicating).

Raymond S. Cole

Mr. Harrigan: All right.

By Mr. Harrigan:

Q. All right now, Inspector Cole, referring to the map on the right side, that would be this plat to the far right.

Would you step to one side so the Judge can see and Mr. Hassan can see, and we all can see.

Now, as you proceeded down Washington Boulevard—Where is Patrick Henry Drive on that map?

A. It doesn't show.

Q. Would it be this road over here (indicating) or over further?

A. Over here, yes sir.

Q. Now as you proceeded toward Patrick Henry Drive where did you first see this individual?

A. On this side of Washington Boulevard.

Q. You're pointing towards the corner of Ivanhoe Street and Washington Boulevard?

A. Yes.

page 83 } Q. On the same side is the yellow marker?

A. Yes sir.

Q. (continuing) Is that right?

A. Yes sir.

Q. And when you observed this individual what was he doing?

A. He was walking towards Glebe Road at a pretty fast clip. He was wiping his face with a towel.

Q. When you say—what kind of towel was that?

A. He had a white, heavy Turkish bath towel.

Q. Around his neck or what?

A. It was draped around his neck but he was wiping his face with it.

Q. What color shirt did he have on?

A. He had on dark trousers and a tan, or some people may refer to it as a yellow shirt.

Q. When you say tan, that would be a light tan, or yellow?

A. Right sir.

Q. All right.

Now when you observed this individual did you recognize him?

A. No sir.

page 84 } Q. Okay.

Now after you observed this individual what did you do?

Raymond S. Cole

A. I went back to the next intersection.

Q. Which would be what street?

A. Jefferson Street.

It doesn't show it all here (indicating)

Anyway, I went to the next street which is Jefferson Street and came out and came back in Illinois Street.

Q. You made a wide circle?

A. Yes.

This is what I did here (indicating).

Q. You went to Jefferson.

Then where did you go?

A. Back up fifteenth street and back to Illinois and I was trying to get ahead of him to take a second look.

Q. All right.

A. (continuing) And I came out Illinois Street.

Q. Was there a stop sign there?

A. Yes sir.

Q. Did you stop there

page 85 } A. Yes sir.

Q. At that point did you see this individual again?

A. No sir.

I looked down the sidewalk and I did not see him when I first glanced down the sidewalk. There was a few cars in between, not heavy traffic, but there was a few.

Q. You say there is a sidewalk on this side of the street?

A. Yes sir.

Q. What about the south side of Washington Boulevard?

A. There's no sidewalk.

Q. This area down here (indicating) what is that composed of?

A. This green?

Q. Yes.

A. That's an undeveloped one block or maybe more than that. But I think it's one block.

Q. What is it; woods and bushes and grass?

A. Yes, sir.

Q. All right.

Now as you come up Washington Boulevard on page 86 } the south side toward Inglewood is there any sidewalks anywhere along there?

A. No sir.

Q. All right.

Where did you next see the defendant again?

Raymond S. Cole

A. About the time I turned, made a right turn and headed back towards this area and shortly after I made my turn I saw the same subject at a bus stop but this time on the opposite side of Washington Boulevard and Inglewood Street.

Q. All right.

There is a bus stop there?

A. Yes sir.

Q. At Inglewood?

A. Yes sir.

Q. Okay.

Then what did you observe, if anything?

A. Somewhere in the area in the middle of the block or maybe before, I got a little closer. I must have been a little closer than that (indicating).

The subject that I had spotted started running and ran behind 1212 North Inglewood; the house on 1212 faces Inglewood street and the house, the other house, faces
page 87 } East Washington Boulevard, and there is more or less an alley way or area way in between the two houses.

The subject ran between these two houses and I lost sight of him.

I immediately came on the air and told the dispatcher—I repeated myself twice—I said, "Scout 71, Scout 71" and then I gave him the information. I said, "There's one running from me at 12—I didn't use the address—I said the corner of Inglewood Street and Washington Boulevard and gave the description of dark trousers and a yellow or tan, short-sleeved shirt.

Q. How about the towel?

A. I don't think I mentioned the towel, as I recall it at that time.

Q. You gave a broadcast as one running from you. You didn't know whether anyone was running from you since you had been out in the car—

Mr. Hassan: (interposing) If Your Honor please, this is his witness, and he shouldn't lead—

Mr. Harrigan: That's your opinion.

The Court: I will overrule the objection.

By Mr. Harrigan:

page 88 } Q. Was that your opinion?

Raymond S. Cole

A. Apparently. I thought—well, I don't know.
He took off.

The Court: Let me ask you this, Inspector:

Did he look at you at any time; did it appear to you from a distance that he saw you?

The Witness: I don't know, Your Honor. I know the man was standing at the bus stop. As I said he was prancing around.

The Court: You were in an unmarked car?

The Witness: I was in an unmarked car.

The Court: You cannot recall if he gave any direct sign of seeing you?

The Witness: I can't say that. But I do know that he must have because before I—I made a sharp turn in here and that's when, before I got to the turn he took out between the houses and I took off—

The Court: (interposing) You were in the block just east of this bus stop, were you?

The Witness: Right here (indicating) sir.

The Court: And you were going west on Washington Boulevard approaching Inglewood?

The Witness: Right.

And just as I turned here to the right I hadn't gone just a few feet and I saw him at the bus stop and before I got to him he took off in behind 1212 North Inglewood.

The Court: Had you started into a left turn or?

The Witness: Not at that time I hadn't.

The Court: Not when he started to run?

The Witness: No sir.

By Mr. Harrigan:

Q. All right.

This side of 1212 is all bushes and trees isn't it, by the bus stop?

A. No sir.

Q. That's not right.

A. Here (indicating)?

Q. Yes.

A. No sir.

Q. Is there any bushes there?

A. Maybe some bushes back by the houses; I don't recall anything along the road, no sir.

Q. Okay.

Raymond S. Cole

page 90 } Now after—immediately after you saw this individual you say was running back between those two houses—

A. (interposing) Right.

Q. (continuing) —you got on the air—

A. (interposing) Right.

Q. (continuing) —and you gave a description of him?

A. Yes, of what I saw.

Q. All right.

Then you say you made a left turn into Inglewood?

A. Yes.

Q. Then where did you go?

A. I came up Inglewood to 11th.

Q. All right.

A. I tried to glance through as I came through here (indicating). Up to this corner I could see to back here (indicating) but not too much. But I could see some.

I came around back through this intersection, made one more right turn and came back to Inglewood the second time.

page 91 } I came back on the air and said I couldn't spot him. About long in here (indicating) somewhere I met Detective Davis who was coming out here (indicating).

Q. When you say along in here somewhere, you're pointing to the map halfway between 11th and Washington Boulevard?

A. Right.

Detective Davis was coming in this direction going to Washington Boulevard.

I continued around one more time, this time slower than the first time, came on around and I pulled up to this particular intersection and—you're talking about this wooded section here. I thought the man was perhaps in here and I was about to pick up my mike to call for a car to assist me when I received a call that they had the man, or they thought they had the man I had seen, at Harrison Street.

Q. So you don't know where this man went when he went back of this house, whether he came back out or not?

A. No.

I suppose he came out when I went by; I don't know.

Q. All right.

page 92 } After you circled the block a couple of times did you then get a radio call from the dispatcher?

A. Yes.

Raymond S. Cole

I was stopped here (indicating) when they came on the air and asked that I respond to Washington Boulevard and Harrison Street, that the subject answering the description that I had broadcast was at this location.

Q. Okay.

Now, when you sent out that broadcast did you send it out to all units?

A. I broadcast it to everybody, yes.

Q. Was that the idea?

A. I called "Scout 71" and that's for my station to answer me of course when I transmit to my station and of course everybody hears it. He in turn broadcast the description I had given, he rebroadcast it.

Q. Was the instruction to apprehend the man fitting that description?

A. Yes.

Mr. Hassan: If Your Honor please, I haven't heard anything about instruction for an apprehension. So
page 93 } far nobody has instructed anybody.

The Court: The objection is sustained.

By Mr. Harrigan:

Q. All right.

When you met detective Davis and talked to him—

Mr. Hassan: If Your Honor please, he didn't say he talked to him.

The Court: The objection is sustained.

By Mr. Harrigan:

Q. All right.

Now when Detective Davis talked—did you stop and talk with each other?

Mr. Hassan: That's leading Your Honor, and he didn't say he stopped and talked with him.

The Court: The objection is sustained and it is leading.

Mr. Harrigan: I would like to say that I think I should be given an opportunity to lead him as an adverse witness. He's the man that put out the description. He's an inspector with the police department and engaged in investigation and
no police officer said anything to me—he won't
page 94 } talk to me about it.

Raymond S. Cole

The Court: He has not been proven to be a hostile witness.

I think if you examine him in the usual way he will respond. But since the objection is made it will be sustained. Go ahead and examine in the ordinary fashion.

By Mr. Harrigan:

Q. Now when you and Detective Davis went by each other, did you go right by or stop?

A. I went right by; I didn't stop.

Q. No one said anything to each other?

A. No sir.

Q. Okay.

Now what was the purpose of putting out your broadcast for this man in a tan or yellow shirt?

A. What was my purpose?

Q. Yes.

A. That's what he had on, sir. I'm really—I put out on air the description of the man I saw. That's what I broadcast, the same as officer Wolfe had earlier of the man he had seen going across the creek.

Q. All right.

page 95 } Q. Now was that for the purpose of apprehending the individual, stopping him? What was your purpose for putting out the broadcast to the other units?

A. Purpose?

Q. Yes.

A. It was to try to locate the individual I had seen.

Q. All right.

Now did anything else come over the air between the time of your description then and the time that Detective Davis called in that he had stopped the man?

A. There was a lot of back and forth on the air but I don't remember what it was. As far as my talking to anyone, no, I don't recall.

The Court: Are you through with the map, Mr. Harrigan?

Mr. Harrigan: Yes, Your Honor.

By Mr. Harrigan:

Q. Then after you—did there come a time when you received a message from Detective Davis?

A. Yes sir.

Raymond S. Cole

Q. And in response to that message where did you go?

A. I went to Washington Boulevard and North
page 96 } Harrison Street?

Q. Where is that in relation to the place where
you saw the defendant?

A. It would be two blocks up, two blocks up toward Glebe
Road.

Q. Was that on the same side of the street?

A. Yes sir.

Q. (continuing) That you saw him on?

A. It was on the same side of the street that he ran behind
the houses, yes sir.

Q. All right.

Did you stop your car when you got up there?

A. At Sixteenth Street—at Harrison Street.

A. Yes sir.

Q. What did you do then?

A. When I pulled up to Washington Boulevard and Harri-
son Detective Davis' unit was parked parallel and I pulled
up along side. Around the corner was a marked car and
another cruiser.

When I glanced out of my car I still couldn't see Patler to
identify him as such, but it was the same man that
page 97 } I had seen on two previous occasions.

I got out of the car and walked to the front of
the cruiser, and the two detectives, Detective Davis and
another detective and a uniformed—

Q. (interposing) Who was the other officer

A. Detective Davis and Detective Faulkner.

Q. And the other?

A. Sargeant Moehler.

Q. They were there prior to you?

A. Yes sir.

Q. And the other detective and officers were there prior to
you?

A. Not at that time. Those three were on the scene when I
got there.

Q. Were any other officers or detectives coming up while
you were there at North Harrison Street?

A. Not that I recall.

Q. Now, where was Patler when you pulled up?

A. Patler was on the driver's—the riding side of the
cruiser over on the far side of the roadway.

His back was to me.

Raymond S. Cole

Q. What was he doing?

A. Standing there.

page 98 } Q. Was somebody standing there with him?

A. Yes sir.

Q. Who?

A. Two people were standing with him; Davis had started walking towards my car at the time.

The Court: He was standing by the cruiser, on the right-hand side of the cruiser?

The Witness: On the riding side; opposite the driving side.

The Court: And the cruiser was standing where?

The Witness: Parallel to Washington Boulevard. In other words, had there been a sidewalk, he would have been on the sidewalk side.

The Court: So the cruiser was on the south side heading toward Glebe Road?

The Witness: Right, sir.

The Court: Now, where were Detective Faulkner and Sargeant Moehler standing, with respect to Patler, when you arrived?

The Witness: Your Honor, all three were right around him; and then Detective Davis started walking toward my car as I pulled up.

page 99 } The Court: All right.

By Mr. Harrigan:

Q. And was it then that you recognized Patler?

A. When I got over into the front of the car I looked and recognized John Patler and I told Detective Davis that this man was John Patler, and an ex-member of A. N. P.

Q. That's all you told him?

A. Right.

Q. Did Patler say anything to you?

A. No sir.

The Court: Was that the first time you recognized his identity, officer?

The Witness: Yes sir.

The Court: All right.

By Mr. Harrigan:

Q. Then, did you leave?

Raymond S. Cole

A. Yes sir.

Q. And then where did you go?

A. I went to the scene of the crime.

Mr. Harrigan: That's all.

CROSS EXAMINATION

By Mr. Hassan:

page 100 } Q. Inspector Cole, when you left—before you
left police headquarters did you have a description of anyone that the police might be looking for in connection with this crime?

A. Mr. Hassan, it was either about the time I left or shortly before I left; I can't remember.

I know this much that on the sqawk box it came on the air that Rockwell had been shot and to get hold of the Inspector and somebody else. I heard that on the air and when I was talking to Johnston and Captain Weekly—I left the office and shortly after there was a description put out.

Q. Did you hear anymore descriptions before you arrived in the neighborhood of Washington Boulevard and Jefferson?

A. Yes sir.

Q. How many?

A. The second, as I recall Mr. Hassan there were two descriptions. One was put out by the dispatcher and the second one was a rebroadcast from on the scene by a detective and I'm sure it was Sargeant Kadel that put out the information.

Q. Now when you saw the defendant for the
page 101 } first on the south side of Washington Boulevard
and Ivanhoe Street—

A. (interposing) Yes sir?

Q. (continuing)—did you believe in your mind that he was the individual you were looking for?

Mr. Harrigan: Objection. It calls for a conclusion of the witness. I think he can testify to what he did and so forth but that's the issue—

Mr. Hassan: (interposing) The issue is probable cause and it is the belief in the police officer's mind that brought forth his actions at the time.

The Court: The objection is sustained.

The court takes note to be what he believed, but what rea-

Raymond S. Cole

sonable cause he had to believe it and that depends upon the facts before him at the time.

Mr. Hassan: I didn't quite get the judge's ruling.

The Court: The objection is sustained as to the state of mind.

What I am concerned with is the facts he had before him which led him to that state of mind; the information he had, the facts he had.

By Mr. Hassan:

page 102 } Q. What was the description you had on the air, if you recall?

A. The description we received—and that's one thing, Your Honor, I asked a minute ago—I was trying to get it in—and, Mr. Harrigan, I apologize.

The description that came on the air was dark trousers and dark coat; he was dark complexioned, either partly Spanish or something to that effect.

That was the description we had received.

Q. And what was the next description you received?

A. Just about the same. Mr. Hassan with the exception that somewhere along the line there came in the part with the yellow socks.

Q. And did there come a time when you heard something about Mexican or Spanish?

A. Yes sir.

I just testified to that.

Q. And did there come a time when you heard a description which changed the Mexican or Spanish?

A. That was the call that was put out by Sargeant Kadel that it could, it might not have been a Mexican or Spanish.

Q. This was before you saw the defendant?

page 103 } A. Right, sir.

Q. Now did there come a time when you arrested this defendant?

A. No sir.

Q. On the basis of the information that you had from the description, had you been able to come up with this defendant your second time—On your first time around the south side of Washington Boulevard would you have arrested him?

Mr. Harrigan: I object, Your Honor.

I don't think whether he would have or would not have arrested him is an issue here.

Raymond S. Cole

Now the fact is he already testified that he didn't arrest him, and that the issue is not whether he would have arrested him.

He's trying to get in the back door what he can't—

The Court: (interposing) I think, again it goes to his mental state and it's really irrelevant and the objection is sustained.

By Mr. Hassan:

Q. Did there come a time when you directed anyone to arrest Patler?

page 104 } A. No sir.

Q. Did there come a time when you directed anyone to arrest the man you first saw on Washington Boulevard?

A. No sir.

Q. Is there any doubt in your mind that the man you first saw was Patler?

A. No sir.

Mr. Harrigan: What was that question again?

Mr. Hassan: Is there any doubt in his mind that the man he first saw was Patler.

Mr. Harrigan: First saw, being where?

Mr. Hassan: On Washington Boulevard.

Mr. Morris: And Ivanhoe?

The Witness: This man that I saw at Ivanhoe was the same one at Harrison Street.

Mr. Morris: That's not the question.

The Court: I took it to be the question.

Mr. Morris: I thought he said that was Patler.

The Court: He later said that the man he saw was Patler, so I think it's all the same.

By Mr. Hassan:

Q. There's no doubt in your mind they were one and the same?

page 105 } A. No doubt in my mind.

Q. How long have you known John Patler?

A. I first knew him in 1960 or thereabouts.

Q. And do you believe that he would have recognized you and you as quickly as you saw him would recognize him?

Raymond S. Cole

Mr. Harrigan: Objection. It calls for a conclusion on the part of the witness; his belief on Patler's eyesight as to whether he would have or not.

The Court: Well, Mr. Hassan, I think you can get that in another way by just asking if he had sufficient personal contact with Patler—

By Mr. Hassan: (interposing)

Q. Have you had sufficient personal contact with Patler so that you would have reasonable grounds to believe that Patler would recognize you when he saw you?

A. Yes sir. I have no doubt about that.

Q. That's the reason he ran, wasn't it?

Mr. Morris: Objection.

Mr. Harrigan: I move to strike that.

The Court: Objection is sustained.

Mr. Harrigan: I move to have it *stricken*.

page 106 } The Court: The objection is sustained.

Mr. Hassan: Exception, please.

By Mr. Hassan:

Q. He was in a position to see you immediately before he ran, was he not?

A. Yes sir.

Q. And he did run?

A. Yes sir.

Q. And you did not see him again until he was apprehended some two blocks away?

A. That's correct, sir.

Mr. Hassan: No further questions.

The Court: Inspector Cole, what is your understanding that you arrived at when you got to North Harrison Street and saw Patler there in the company of two detectives and a uniformed officer? Was it that he was then under arrest?

The Witness: I would say so.

The Court: So you did not arrest him yourself?

The Witness: I did not arrest him.

Mr. Hassan: I object to that. That may not be the reason—I don't think the court should question his reason.

The Court: I was just asking him—

page 107 } Mr. Hassan: (interposing) I would object to

Ernest R. Davis

it. I think he should be allowed to express his own reasons.

The Court: Perhaps your objection is well taken.

Don't consider that I have suggested the answer to you Inspector. I just wanted to know why you did not arrest him or give any orders that he should be arrested.

The Witness: Your Honor, when I arrived on the scene he was in the company of two detectives and a uniformed police officer. Those detectives would be the ones to carry this case; not me.

Mr. Morris: What was that last statement?

Mr. Hassan: Those detectives would be the ones to carry the case and not him.

The Witness: I'm not in the habit of making a case when someone else has them.

Mr. Harrigan: I have one other question.

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. You say there was some other information page 108 } about yellow socks?

A. Somewhere along in one of our lookouts there was a mention made about yellow socks. I don't recall which, whether it was the first, second, third, or what. But somewhere along the line there came on the call about yellow socks.

He didn't have on yellow socks.

Q. What color socks did he have on?

A. I don't recall.

Q. But you recall they were not yellow?

A. That's right.

Mr. Harrigan: That's all.

The Court: Any further questions, Mr. Hassan?

Mr. Hassan: No further questions.

The Court: May Inspector Cole be excused?

Mr. Harrigan: I have no objection.

The Court: All right, sir, you're excused.

Mr. Harrigan: Call Detective Davis.

Whereupon, ERNEST R. DAVIS, was called as a witness by the defense and having been previously duly sworn was examined and testified as follows:

Ernest R. Davis

page 109 } DIRECT EXAMINATION

By Mr. Harrigan:

Q. Would you state your name, please?

A. Ernest R. Davis.

Q. And your occupation?

A. Police, Arlington County Police Department.

Q. And were you a detective on August 25, 1967?

A. Yes sir.

Q. Now calling your attention to sometime around 12:25 to 12:30 that day, did you have occasion to see John Patler?

A. Yes sir.

Q. Where was he when you first saw him?

A. Washington Boulevard and North Harrison Street.

Q. And what was he doing when you first saw him?

A. Standing on the corner.

Q. Is that a bus stop there?

A. Yes sir.

Q. And in which direction were you coming from?

A. Well, I was headed east.

Q. East?

A. I was headed east.

page 110 } Q. That would be toward Washington?

A. Toward Washington.

Q. Toward Washington. All right.

How far were you from the defendant when you first saw him?

A. About half a block.

Q. In which direction was he looking; toward you or the other way?

A. I don't remember which way he was looking.

Q. What kind of a car were you driving?

A. You mean the make? I was driving a police cruiser.

Q. Was it a marked or an unmarked cruiser?

A. Unmarked.

Q. Unmarked.

Now prior to your seeing the defendant standing on the corner did you have an occasion to hear any broadcast from Inspector Cole?

A. Yes sir.

Q. Will you tell us the substance of that particular broadcast?

A. He stated that he had spotted a subject on Washington

Ernest R. Davis

Boulevard and approximately Inglewood Street
page 111 } and that he had disappeared on him and said
the subject was a male and had on a tan or
yellow shirt, dark pants and tennis shoes.

Q. He had on a tan or yellow shirt and dark pants and
tennis shoes?

A. Yes sir.

Q. Did he say anything else about what he was wearing?

A. No sir.

Q. Did he say anything about a towel?

A. Not to my knowledge.

Q. All right.

Now were you told by Inspector Cole to apprehend this
subject?

A. No sir.

Q. All right.

What were you supposed to do—let me ask you this.

Calling your attention to September 28, 1967, you testified
in the preliminary hearing, is that right?

A. Yes sir.

Q. And on page 79 you were asked in a question:

“Q. And you were told by Inspector Cole to
page 112 } apprehend the subject?”

And your answer was:

“A. Yes sir.”

Would you look at that?

A. Yes, sir.

Q. And your answer was “Yes sir.”?

A. Yes sir. But I said “No sir.”

Q. You’re changing your testimony then?

A. I’m not changing it. I said “No sir” at that time.

Q. Is that right?

All right.

Now the next question was:

“Q. And you apprehended him on the basis of the second
description only?”

And your answer was:

Ernest R. Davis

"A. Yes sir."

Is that inaccurate also?

A. No sir.

Q. All right.

Now when you observed—*srike* that.

When you observed this particular subject how long was it
after you received Inspector Cole's radio call
page 113 } that you observed—

Mr. Hassan: (interposing) I'm sorry, I didn't quite hear
what you said.

Mr. Harrigan: I'm sorry.

By Mr. Harrigan:

Q. I said, how long was it after you received Inspector
Cole's radio call that you observed Mr. Patler?

A. A matter of three, four, or five minutes.

Q. I see.

And do you recall around what time of the day that was?

A. Between 12:25 and 12:30 p.m.

Q. Now when you observed him, tell us exactly what you
did?

A. I stopped my car right on the Boulevard, Washington
Boulevard, got out and walked over to him and I identified
myself to him as a police officer and asked him for some iden-
tification.

He stated he didn't have any; I asked him his name, he
didn't give it.

Q. What did he tell you?

A. He didn't say anything when I asked him his name
and he said he didn't have any identification.
page 114 } I asked him his name and he didn't say anything.

Q. All right.

Did you search him?

A. No sir.

Q. All right.

Now how long were you there before other policemen came
up?

A. I would say just a matter of seconds. I wouldn't say
definitely the time, just a matter of seconds.

Q. What other policemen came up?

A. Well I couldn't name all of them.

Ernest R. Davis

Detective Faulkner; Sergeant Moehler; Officer Herring; Detective Payne; and I think Detective Abe Brown. That's the best I can remember.

Q. How about Peever?

A. No.

Q. He wasn't there?

A. Not that I saw.

The Court: Was Inspector Cole there?

The Witness: Inspector Cole came and then left.

By Mr. Harrigan:

Q. Were any of these officers carrying shotguns?

A. I believe *Sargeant* Moehler did.

page 115 } Q. He had a shotgun?

A. I believe so.

Q. Now, had you heard any other description other than the one Inspector Cole gave you?

A. Yes sir.

Q. What was that?

A. A male; dark clothes; dark complexion; Spanish or Mexican descent.

Q. You said dark clothes?

A. Yes sir.

Q. Now, was it dark clothes or dark trousers?

A. Dark clothes.

Q. Just dark clothes.

Do you know what time Rockwell was shot; did you hear that over the radio?

A. Yes sir.

Q. What time?

A. Approximately 12, 12:02 p.m.

Q. All right.

Now how long did you remain in that vicinity with the other officers and Patler?

A. A matter of five minutes maybe.

Q. And was the defendant taken away at that point?

A. Yes sir.

page 116 } Q. (continuing) By someone?

A. Yes sir.

Q. And by whom?

A. Detective Faulkner and myself.

Q. Was he handcuffed?

A. Yes sir.

Ernest R. Davis

Q. Whose car was he placed in?

A. Mine.

Q. Do you know who placed the handcuffs on him?

A. Yes sir.

Q. Who?

A. Detective Faulkner.

Q. Now directing your attention to this map down here, in the far righthand side of the map, this yellow dot here. Is that where Mr. Patler was apprehended?

That's Washington Boulevard, and Harrison Street on the south side of Washington Boulevard.

A. Well, I guess it's Harrison Street. It doesn't have a name on the street but it's before Illinois so I guess it's Harrison.

Q. Now when he was placed in the car did another Detective go with you in the car?

page 117 } A. Detective Faulkner.

Q. All right.

Then was he subsequently transported to the police department?

A. Yes sir.

Q. Now what time did he arrive at the police department?

A. 12:47 p.m.

Mr. Hassan: If Your Honor please, I think we're getting far afield.

I don't expect defense counsel maintains he was arrested when he was handcuffed, and the arrest is what we're here for today.

By Mr. Harrigan:

Q. You sworn to the warrant?

A. Yes sir.

Q. (continuing) Is that right?

What time did you swear to the warrant?

A. 12:50 p.m.

Q. Was the Justice's office closed when you got there?

A. When we first brought the suspect in?

Q. Right.

page 118 } A. Yes sir.

Q. Do you recall what color socks the defendant had on when he was arrested?

A. Yes sir. I believe dark blue, blue or black. Dark.

Q. What color shirt?

Ernest R. Davis

A. A yellow shirt with a small stripe.

Q. And dark pants?

A. Yes sir.

Q. Were they green or olive green?

A. Olive.

Q. Olive? Just plain olive?

A. A solid color.

Q. Okay.

Mr. Harrigan: That's all.

The Court: Mr. Hassan?

CROSS EXAMINATION

By Mr. Hassan:

Q. When the first call came out at 12 o'clock or 12:02, where were you?

A. Approximately 20th and Number One Highway south.

Q. Did you respond immediately to the area?

A. Yes sir.

page 119 } Q. And between the period from 12 to 12:02,
to 12:25 to 12:30 how many descriptive broad-
cast did you hear?

A. Two.

Q. And what was the first that you heard and who put it out?

A. The first one I heard came from the police dispatcher.

Q. And what was that description?

A. A male; dark complexion; dark clothes; Spanish or Mexican descent.

Q. What was the second one that you heard?

A. From Inspector Cole and it said a male in a tan or yellow shirt, dark pants and tennis shoes.

Q. Now between the time that you got the first call—

The Court: Excuse me.

Would you repeat the last color?

The Witness: Me?

The Court: Yes.

The Witness: Tan or yellow shirt; dark pants, and tennis shoes.

By Mr. Hassan:

page 120 } Q. Between the time that you got the first call,

Ernest R. Davis

the first description—by the way, where were you when you got the first description?

A. I couldn't pinpoint it. I was headed for the area.

Q. And about what time did you arrive in the area?

A. 12:10, 15.

Q. What did you do when you got there?

A. Just searched the area.

Q. What area was this?

A. Around the edge of Bon Aire Park; Patrick Henry Drive, and the lower part of Westover.

Q. And what were you searching for?

A. For the male who fitted the description of the subject I got over the radio.

Q. Did there come a time when you saw Inspector Cole?

A. Yes sir.

Q. Was that before or after you heard his lookout?

A. Before or after I heard his lookout?

Q. Yes.

A. After.

Q. After you heard his lookout?

page 121 } A. Um hmm. (nodding affirmative.)

Q. Where did you see him?

A. Washington Boulevard and Inglewood Street, south side of Washington Boulevard just, oh, a few yards in off of Washington Boulevard.

Q. Where were you coming from?

A. I was proceeding North on Illinois, or Inglewood Street.

Q. Towards Washington Boulevard?

A. Toward Washington Boulevard.

Q. When you left that corner what did you do?

A. Turned right on Washington Boulevard and headed east.

Q. And did you go anywhere else before you saw the defendant?

A. No sir.

Q. You saw him immediately after leaving there?

A. Yes sir.

Q. And what drew your attention to him?

The Court: Excuse me. I didn't understand you.

By Mr. Hassan:

Q. What drew your attention to him?

page 122 } A. From the description that I heard from

Ernest R. Davis

Inspector Cole which was put out on a yellow and tan shirt and dark pants and tennis shoes.

Q. And did he fit the description you had been looking for all the time you had been searching the area?

A. To me he did.

Q. To you he did?

A. Yes sir.

Mr. Hassan: No further questions.

Mr. Harrigan: Nothing further.

That's all. Thank you.

The Court: May he be excused?

Mr. Hassan: Yes.

The Court: Sir, you are excused.

Mr. Harrigan: That's all on this motion.

The Court: Does commonwealth wish to call witnesses?

Mr. Hassan: No, Your Honor.

The Court: All right.

Proceed with your argument. I would rather proceed with one at a time.

Mr. Harrigan: Now the question in this paragraph 123 } ticular issue is whether the police had probable cause to believe that this was the man that shot Rockwell.

Mr. Hassan: If Your Honor, that isn't the question and I'm going to object to him putting it in that form.

The question is: was Patler arrested on probable cause and he has even failed to produce who arrested him.

Mr. Harrigan: We'll see about that.

Mr. Hassan: Mr. Davis didn't put the handcuffs on him. The truth of the matter is that Detective Faulkner arrested him, when he put the handcuffs on him.

Mr. Harrigan: Now may I continue?

The Court: Go ahead.

Mr. Hassan: I don't want to object to all of these but if I have to, I will object again.

Mr. Harrigan: We heard the evidence and the evidence is—

The Court: Is Detective Faulkner here?

Mr. Hassan: Certainly he's here.

The Court: Has he been called as a witness? Is he available to testify?

Mr. Hassan: Certainly. He's in the witness room.

The Court: I'd like to hear his testimony.

Edmund A. Faulkner

page 124 } Mr. Harrigan: All right.
I'll call him.

The Court: I'll call him, if you wish.

Whereupon, EDMUND A. FAULKNER, was called as a witness by the defense and having been previously duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. Would you state your name and your occupation please?

A. Edmund A. Faulkner, Detective, Arlington Police Department.

Q. On August 25, 1967, were you a detective at that time?

A. I was.

Q. Calling your attention to that day did you have an occasion to go to the intersection of Washington Boulevard and Harrison Street on or about 12:25 or 12:30 that day?

A. I did.

page 125 } Q. What time did you arrive there?

A. I don't remember the exact time but I had come from South Arlington and was responding to a call.

Q. I see.

Now when you arrived there who was there?

A. Davis—

Mr. Hassan: When he arrived where?

Mr. Harrigan: Everybody knows we're talking about Washington Boulevard and Harrison Street.

Mr. Hassan: Why don't you be more specific. Tell us where he arrived and what time.

By Mr. Harrigan:

Q. When you arrived at Washington Boulevard and Harrison Street, who was there?

A. Detective Davis and Sargeant Moehler.

Q. Was Moehler carrying a shotgun?

A. I believe he was.

Q. Who else was there?

A. When I arrived there, I didn't—other than Mr. Patler, I didn't see anybody.

Q. All right.

Edmund A. Faulkner

It was Detective Davis, Sargeant Moehler, and Mr. Patler who were there.

page 126 } A. Right.

Q. How many police cars were there?

A. Police units?

Q. Yes.

A. Three; mine, Davis, and Moehler.

Q. Where was Patler standing?

A. Near the bus stop on the south side of Washington Boulevard.

Q. And was anybody standing near him?

A. Davis and Moehler.

Q. Now how long—did there come a time when Inspector Cole came up?

A. There did.

Q. And did he leave shortly thereafter?

A. He did.

Q. Now did anyone put handcuffs on the defendant?

A. I did.

Q. And what was done with him after he was handcuffed?

A. Taken to Detective Davis' car and put in the back of the car.

Q. I see.

And did you ride with Detective Davis?

page 127 } A. I did.

Mr. Harrigan: No further questions.

CROSS EXAMINATION

By Mr. Hassan:

Q. Where were you when you got your first call?

A. I believe in the sixteen hundred block of South Glebe Road in Arlington.

Q. And where did you proceed to when you left there?

A. I proceeded north on Glebe Road, up Glebe Road.

Q. What time was this?

A. Shortly after noon.

Q. How shortly after noon?

A. I don't recollect but I would say between 12 and 12:15.

Q. And when you proceeded up Glebe Road where did you proceed to?

A. Sixty hundred block of Wilson Boulevard.

Edmund A. Faulkner

Q. What did you do when you got there?

A. Proceed—I went out Lexington Street before I got to the sixty hundred block and I went out Lexington and past 9th and weaved around to Fairfax Drive.

Q. Why did you do that?

page 128 } A. From the radio transmission the suspect wanted in the case had been seen running that way.

Q. Did you hear any description?

A. I did.

Q. How many?

A. It was a couple or more radio transmissions going over the description. The first I got was Italian or Mexican descent wearing dark clothes; medium build, or height.

Q. Now, how many after that did you receive before you heard Inspector Cole?

A. Sir, I couldn't tell exactly how many went over. I copied one down, wrote it down on a pad on the Mexican or Spanish descent, wearing dark clothes, medium build.

Q. This is what you were in the area looking for? This suspect of that description?

A. I was.

Q. Where were you when Cruiser 112 said he thought he had him at Harrison and Washington Boulevard?

Mr. Harrigan: Who was Cruiser 112?

Mr. Hassan: He knows.

Mr. Harrigan: I think nobody else knows.

page 129 } The Witness: I would say I was approximately a block and a half away from there when the transmission went out.

By Mr. Hassan:

Q. Where?

A. I was on the south side of Washington Boulevard south of the vicinity of Harrison Street.

Q. How long had you been in that area up to this time?

A. I had been in that area approximately two to three minutes or more.

Q. And then you responded to Washington and Harrison?

A. Yes.

Q. Did you hear Inspector Cole's lookout?

A. I did.

Q. Is that why you went into that area?

Edmund A. Faulkner

A. Yes sir, I did.

Q. You were in that area at that time?

A. No sir.

I was—when Inspector Cole's lookout came I was around Fairfax Drive and, I believe it was Patrick Henry Drive, in that area, and I just scooted right up Patrick
page 130 } Henry Drive and eased my way around through to Washington Boulevard.

Q. And where was Detective Davis when you handcuffed Patler?

A. When I handcuffed Patler, Davis had walked towards Inspector Cole's car.

Q. Did Davis tell you to handcuff him?

A. No he did not.

Q. Did *Sargeant* Moehler tell you to handcuff him?

A. No he did not.

Q. Did Inspector Cole?

A. No he did not.

Q. Why did you?

A. I thought he was the culprit wanted in a shooting. He fitted the description I had.

Mr. Hassan: No further questions.

The Court: Detective Faulkner, when you speak of these lookouts which come over the radio—let me back up a little.

The one from Inspector Cole, did you receive that before you received a direction to respond to Harrison Street? Did
page 131 } you get Inspector Cole's lookout before that?

The Witness: No sir, Your Honor.

The Court: You got Inspector Cole's lookout when you were enroute to Harrison Street?

The Witness: I had come out and was in the vicinity of Fairfax Drive near the Park in the Westover area looking for the first description of the Italian Mexican descent and dark clothes; an olive complexion maybe.

The description said he ran toward the Park and then later the man with the yellow shirt was on a radio lookout which was put out by Inspector Cole.

The Court: Now what I want to know, did you get that one, the one from Inspector Cole concerning the man in the yellow shirt before you were told to go to Harrison Street?

The Witness: Before Detective Davis' communication went out, I did. Yes sir.

Edmund A. Faulkner

The Court: Was Davis' communication the first one that told you to report to Harrison Street?

The Witness: It did not advise me to report to Harrison Street.

It said they had a subject at Harrison Street.

The Court: That is the first you heard of the page 132 } subject at Harrison Street?

The Witness: That's right.

The Court: Now going back to Inspector Cole's lookout, tell me what did it say? Not just the description but the whole thing.

The Witness: That a man had just *ran* from him in a yellow shirt, dark trousers, and I believe he said at that time—he said something about a towel, and he ran behind a house, or words about a house in the vicinity, I believe around Washington Boulevard just west of Harrison Street, in that area. I believe it said Inglewood in the communication. I'm not exact on that. I'm not sure of what street he said.

The Court: Well, you answered Mr. Hassan that when you handcuffed the defendant here you did so because you believed he was the culprit involved in this case.

What made you believe that? What made you connect him with the case?

Mr. Hassan: He said from the description of what he was looking for.

Mr. Harrigan: I object to Mr. Hassan testifying.

Mr. Hassan: I'm glad you don't like my memory.

The Court: I want to give him an opportunity page 133 } to make it clear where he got that connection.

The Witness: From the report that a man of Mexican or Spanish descent was running toward the Park from the sixty hundred block of Wilson Boulevard was the first communication that I got. And that he was wearing dark clothes.

This is why I had reason to believe that this was the man and I handcuffed him.

The Court: What was your reason to believe he was the one?

The Witness: Number one, he was perspiring. His whole shirt down to the shoulder blade was wet. He had a towel wiping his face from perspiration as though he had been running from where Inspector Cole said he had seen this individual and I felt that would be part of his direction of travel from the area.

Edmund A. Faulkner

He was wearing dark trousers at the time. I thought he could have shed the raincoat because of it being hot. He could have thrown that away some place.

The Court: Was it a rainy day?

The Witness: No sir, it was not.

The Court: What was the weather conditions?
page 134 } The Witness: I did not have a coat on. I did not have a raincoat on. I had just a regular suit coat. I was not warm; I was comfortable in my coat.

The Court: Was it a clear day or do you remember?

The Witness: I don't recall sir.

The Court: Did either of these broadcasts, the first one from the dispatcher, or the second one from Inspector Cole, connect the individual that was being sought with the Rockwell shooting or did you do that simply on an assumption of yours?

The Witness: Your Honor, the officer on the radio transmission said that—one of the officer's—I don't remember the other call and under or what the officer's name was that had put it out—but someone answering the description of this dark Mexican type was seen running from the scene towards the Park.

The Court: So that was a part of one of the lookouts broadcast, was it?

The Witness: That's correct, sir.

The Court: Could that have been the first broadcast of the dispatcher or the second one from Inspector
page 135 } Cole?

The Witness: I don't know, Your Honor.

I was out of service at the sixty hundred block of Glebe Road and when I came back in service is when the radio communications were going.

The Court: Was there anything in Inspector Cole's broadcast which would connect the man he was talking about with the Rockwell shooting or did he simply say, "I see a man running from me"?

The Witness: He described the man and the man was running in back of the houses on Washington Boulevard wearing a yellow shirt, and that he ran from him when he saw him, the way I get it. And then Detective Davis came back on the radio a short time after that, with the individual.

The Court: Saying they had him at Harrison Street?

The Witness: And that description of Inspector Cole's transmission.

Edmund A. Faulkner

The Court: What, if anything, was there about this transmission that led you to think they were talking about the Rockwell case?

The Witness: The Davis transmission.

page 136 } The Court: Either Davis or Cole.

The Witness: Well the description of a man running for one thing, and running in that area, and then when I observed the man and he was with the Italian or Spanish descent, medium build, wearing dark trousers and dark shoes. This is what I based my opinion on.

The Court: Did Patler appear to you to have these characteristics?

The Witness: He did.

The Court: What kind of shoes was he wearing?

The Witness: Canvass, the canvass type, dark shoes.

The Court: You gentlemen wish to examine further?

Mr. Hassan: No questions.

Mr. Harrigan: Nothing further.

The Court: May the witness be excused.

Mr. Hassan: I have decided to put on some evidence.

Mr. Harrigan: Objection. He had his chance.

The Court: Have you got *Sargeant* Moehler here?

Mr. Hassan: He's here. I don't intend to call
page 137 } him at this moment.

I'm going to offer the tape of all broadcasts for any particular period.

Mr. Harrigan: I object to the tape of all broadcasts. We've got evidence as to which part of it we need.

Mr. Hassan: I'm going to offer it anyway.

The Court: This is what the defense was seeking on discovery in the earlier part of the day. It's not being heard by a jury and it will give me some opportunity to know what these officers heard when they acted.

So it will be received.

Mr. Harrigan: Exception.

The Court: Gentlemen, the reporter desires to know if you wish him to attempt copying the tape.

The tapes themselves can be put into evidence so I would think—what is your opinion about it? It might be rather difficult to copy.

Mr. Hassan: I think we could take a subsequent time and re-record the portion of the tape that is relevant. This is a 24-hour tape and we are only going to play a small portion of it.

Alan A. Fuchioman

page 138 } That small portion can be recopied from this machine onto other tapes.

The Court: Are you willing to stipulate that it be done?

Mr. Hassan: If it becomes necessary then he can transcribe it later on. We can give him a copy of the tape, rather than try and take it down.

Mr. Morris: We would just as soon he take it down, if he can accomplish it.

The Court: We will ask him to do his best.

(Reporter's note: Above-referred to tape was at a subsequent time, during the trial, entered into evidence.)

Whereupon, ALAN A. FUCHIOMAN, was called as a witness by the Commonwealth and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir, and your occupation.

A. Alan A. Fuchioman, Lieutenant, Arlington County Police Department.

page 139 } Q. What is your position?

A. I'm in *charges* of the Communications and Records Bureau.

Q. In your performance of this job do you keep records of radio transmissions?

A. Yes sir.

Q. And did you bring with you today the tape of the transmission during the 12 noon period of August 25, 1967, regarding the apprehension of Mr. Patler?

A. Yes I did.

Q. And do you have that there now and ready to play it for the court?

A. Yes sir.

Mr. Morris: If Your Honor please, what time will this tape begin?

The Witness: Approximately twelve o'clock.

Mr. Hassan: It will be the first call connected with this up until—as long as you want to listen to it. But the apprehension comes about 12:24 or 12:25.

Russell L. Moehler

It's got to run now for about 20 minutes, or 25 minutes.

(Whereupon, the tape recording of police broadcast was played.)

page 140 } Mr. Harrigan: All right.

The Court: Do you gentlemen have anything further you wish to present on that tape?

Mr. Harrigan, do you have anything further?

Mr. Harrigan: On the tape?

The only other thing I have is that I object to the tape to start with. I don't think any of this is very damaging in any way but I think the issue on this comes down to how much Inspector Cole and Detective Davis heard. And Detective Faulkner testified that he was out of service for quite a bit of it.

So the part that they testified to is based on that particular tie-up, and I don't think it's tied in the way it should be and I move at this time to strike it.

The Court: Motion is denied.

Now, as far as the tape is concerned, have you any further examination?

Mr. Harrigan: Exception.

The Court: Any further examination of Lieutenant Fuchioman by either side?

Mr. Harrigan: No.

The Court: All right. You're excused, sir.

page 141 } The Court: Is *Sargeant* Moehler still here?

Mr. Hassan: Yes he is.

The Court: Call him, please. I would like to examine him.

Mr. Harrigan, do you want to examine?

Whereupon, RUSSELL L. MOEHLER, was called for examination by the Court and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. State your name, please.

A. *Sargeant* Russell L. Moehler.

Q. And you're an Arlington County police officer?

A. That's correct.

Q. Calling your attention to August 25, 1967, did you have

Russell L. Mochler

an occasion to respond to Washington Boulevard and North Harrison Street?

A. Yes sir, I did.

Q. And did you respond there?

A. Yes sir, I did.

Q. And who was there when you arrived?

A. When I arrived at Harrison Street, this
page 142 } gentleman here was standing at a bus stop.

Q. And who else was there?

A. Officer—Detective Davis.

Q. Detective Davis?

A. That's correct.

Q. Were you armed?

A. Yes sir, I was.

Q. What were you carrying?

A. I was carrying my .38 on my hip and a shotgun in my
hand.

Q. All right.

Now did you hear Inspector Cole's transmission?

A. Yes sir, I did.

Q. All right.

Now what did you do when you arrived there?

A. At Harrison Street and Washington Boulevard?

Q. That's right.

A. Parked my patrol car on Harrison Street and I
alighted from the car.

Q. Did you have your shotgun with you?

A. At that time I had to take my shotgun out of the rack,
and at this time, like I say, Detective Davis had
page 143 } arrived on the scene and was talking to this
gentleman. (nodding toward defendant)

Q. Where was the defendant, Mr. Patler?

A. At the bus stop.

Q. I mean, where was he in relation to Detective Davis'
car?

A. Detective Davis had parked west of the bus stop on the
south side of Washington Boulevard. And I would say they
were approximately five to six feet from the vehicle.

Q. Did Davis have his gun out, or was it in?

A. I don't remember.

Q. You had a shotgun in your hand so obviously you didn't
have a pistol on him, is that correct?

A. That is correct.

Q. Now, when you walked up, what did you do?

Russell L. Moehler

A. I just approached the two people and stopped and remained at that position.

Q. All right.

Now, how close?

A. We were within five feet, I suppose.

Q. What did Davis do?

A. He still was talking to this gentleman.

Q. Was this man saying anything to him?

page 144 } A. I haven't the slightest idea. I don't remember any part of the conversation.

Q. You don't?

A. At that time I believe Detective Faulkner arrived on the scene.

Q. All right.

Did you observe anyone search him?

A. I don't remember.

After detective Faulkner arrived on the scene I went back, I went back in service.

Q. You went back to service, meaning that you went back to your car?

A. That's correct. I went back to my car.

Q. Did you see who handcuffed this man?

A. Detective Faulkner handcuffed him, I believe.

Q. Did Faulkner say anything to him prior to handcuffing him?

A. I don't remember whether he did.

Q. Do you remember whether he said anything to him at all?

A. I don't recall.

Q. You don't.

Mr. Harrigan: That's all.

page 145 } The Court: Mr. Hassan?

I understood Mr. Harrigan to say he was through.

Mr. Harrigan: No.

By Mr. Harrigan:

Q. Did you ever see him leaning over the car with his hands on the car?

A. I don't recall that, sir.

Q. You don't recall?

A. That's right.

Like I say, I had turned away from this part of the pro-

Russell L. Moehler

ceedings and I approached I believe it was Inspector Cole who had arrived at the scene almost at the same time.

Q. Do you recall what Inspector Cole said?

A. No sir. I don't believe there was any conversation at that time.

Q. Did this man say anything to anybody?

A. Like I said, I didn't hear any part of the conversation.

Mr. Harrigan: That's all.

CROSS EXAMINATION

By Mr. Hassan:

Q. Sargeant Moehler, when did you first know page 146 } of the shooting at 6021 Wilson Boulevard?

A. I was at the station when it was first reported to me that there was a shooting at 6000 block of Wilson Boulevard.

Q. What part of the station were you in?

A. I was in my office which is in the basement.

Q. What did you do then?

A. I immediately went out and got in my patrol car and headed for the location.

Q. And how long was it before you responded to Harrison Street and Washington Boulevard?

A. I would say approximately fifteen to twenty minutes.

Q. And during that course of time how many descriptions did you hear broadcast on the radio?

A. I heard two descriptions, sir.

Q. And how many times did you hear those two descriptions?

A. Twice, I believe.

Q. Did you hear them repeated?

A. No sir.

I was out of the car part of the time.

Q. You were out of the car part of the time? page 147 }

A. That's right.

Q. How many times did you hear Inspector Cole's description?

A. Just once.

Q. Just once?

A. Yes sir.

Q. How many times did you hear the other description?

A. One other time that I can recall, sir.

Russell L. Moehler

Q. Where did you get out of the car?

A. After I responded and I had information that the person was headed into Bon Air Park I positioned myself at Bon Air Park and Arlington Mill Drive, and it's a dead end which runs parallel to the railroad track.

Q. And when you received the radio call from Inspector Cole that he had spotted someone and they had run from him, where were you?

A. I was on 11th Road eastbound at Jefferson Street.

Q. And where did you proceed to from there?

A. I headed east on 11th Road to Illinois Street and made a left and headed along northbound into Washington Boulevard.

Q. Then where did you go?

page 148 } A. I stopped for a stop sign at Illinois and Washington Boulevard and I observed a subject answering the description walking east on Washington Boulevard from Illinois Street.

I then made a right turn on Washington and proceeded to Harrison Street and made a right turn southbound on Harrison.

Q. You passed the subject and got in front of him?

A. Right, sir.

Q. And when you saw the subject, where was Detective Davis?

A. After making my turn up Illinois to Washington Boulevard I told the dispatcher that I had spotted a subject answering this description.

Q. And you went, 10-7?

A. 10-7.

Q. What did you intend to do when you went 10-7?

A. I intended to immediately get out and approach the subject.

Q. What were you to do when you approached the subject?

A. I was going to question him if necessary.

page 149 } Q. And after that, Detective Davis arrived?

A. That's correct.

Q. How long after that did Detective Faulkner arrive?

A. I would say two or three minutes.

Mr. Hassan: No further questions.

Russell L. Mochler

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. You say you intended if necessary to question him? What do you mean by that? Did you mean to apprehend him; is that what you were going to do?

A. If that was necessary, yes.

Detective Davis arrived at the scene almost immediately—

Q. (interposing) Were you of the opinion—

A. (continuing) after I stopped my car.

Q. (continuing) that Detective Davis apprehended him?

A. Yes sir.

Q. All right.

Mr. Harrigan: That's all.

The Court: You may be excused.

Any further evidence on this motion?

page 150 } Mr. Harrigan: No, Your Honor.

The Court: All right.

I'll now hear argument.

Mr. Harrigan: The first thing I think to consider in this particular matter is when did the arrest take place because at the time the arrest took place they had to have probable cause. If they didn't have it then, then the arrest was illegal, and what the police turned up later on sometime after that doesn't make it legal.

So the question comes down to exactly when did the arrest take place.

There was testimony early in the case that Inspector Cole sent out a radio message with a description of clothing which the defendant was wearing and I think the context of which it was sent out clearly indicated that the officers were responding there for one purpose only—and they even called him a suspect—and that was to arrest the individual.

Detective Davis was the first man. He saw Patler standing by the bus stop on Washinton Boulevard and Harrison Street and he pulled up and he stopped him.

Our position in this case is that when Officer Davis restricted this man's liberty and movement at that
page 151 } time and stopped him, for all practical purposes
the arrest took place then.

Now the law on arrest I think is fairly well settled as to when an arrest takes place.

In *Kelly v the United States*, which is 298 Fed. 2nd, 310, at page 312; in ruling when an arrest takes place the court there said in order for there to be an arrest it's not necessary for there to be an infliction of force or manual touching of the body or physical restraint which may be visible to the eye for a formal declaration of arrest. It's sufficient if the person arrested understands he is in the power of the one arresting and submits in consequence.

Now in this case, the Kelly case, was a situation where two policemen walked into a restaurant and approached the defendant who was sitting next to a known prostitute and who was a previously convicted felony.

They said "come outside, we want to talk to you". Pursuant to their request, he got up and walked out. When they got outside he agreed to go through his pockets, and finally brought out some marijuana.

page 152 } The issue there was, when did the police have probable cause to arrest him; when they approached him, when he went outside with them, or when they found the marijuana. When in fact did the arrest take place?

The court held in that case that the element of restraint was sufficiently present when they asked him to step outside and they found the marijuana, and the second necessary element, the defendant's understanding of the circumstances, could be inferred from the facts.

The court indicated the arrest was probably completed when they told the defendant to step outside, but it was beyond doubt when the defendant got outside the restaurant.

And then the Supreme Court ruling on what constitutes an arrest when arresting someone on suspicion of a felony—I don't think there's any question that they were after a yellow shirt based on suspicion of a felony.

In the Henry case, which I think is a leading case on arrest, federal officers were investigating a theft of whiskey from an interstate shipment.

They had information that this particular guy
page 153 } was involved in this particular theft.

The Court: Wasn't this the case, Mr. Harrigan, where they didn't know anything about this particular man but they knew about the man who was riding with him in the car and saw this man Henry with the suspect who had an Italian name. I've forgotten it. And they followed them and saw them doing something, picking cartons up at a place in residential area and were putting them in the car. Then later they arrested him or detained him and then looked in

the car and found what was contraband and found it was stolen?

Mr. Harrigan: That's it.

And the court held that the arrest took place at the moment they stopped the car.

The Court: They had no probable cause. The people had a perfectly innocent explanation at that time. The officers had no knowledge of a crime being committed at that time.

Is that right?

Mr. Harrigan: They had knowledge of an interstate shipment, as I understand the case. That's where this was a crime, but no direct link to these two people in the page 154 } particular crime. But there was a theft of whiskey from interstate, and they had information from an informer.

The Court: But they had no information linking these two people to the crime.

Mr. Harrigan: As to Pierotti.

The Court: Well, they had no information as to Henry either, did they?

Mr. Harrigan: No.

On the other hand as he was with Henry, and as they approached the car they heard him say something to the effect, "Hold it; it's the G's" and, "tell them you just picked me up" or something to that effect.

Now, I think more in point in this particular case, I think what Henry stands for is that when a person's liberty is sufficiently restrained for all practical purposes that is an arrest. There's no question about it. It's just a matter of seconds here that this was an arrest.

Where, as in the Rios case the Court said if you stop somebody for momentary detention then that would not be an arrest if their purpose was only a momentary page 155 } detention.

I think in this case we would be hard pressed to find from this set of facts, and the tapes, and the testimony, that stopping this particular man in a yellow shirt was for the purpose of momentary detention, to ask him a few questions. I think him being a suspect was the tenor of the testimony and the facts bear him up on that as to just what they did.

So our position is at the time that Davis stopped him, he had to have probable cause to believe this guy was involved in the Rockwell shooting.

Now the next case on probable cause which follows Henry's, and is one of the leading cases, is *Wong Sun v United States*,

which is a little bit more parallel to this case, 83 Supreme Court 407, U. S. number 471.

The Court: That's all right.

Mr. Harrigan: All right.

Now that was a case where the federal agents arrested a man by the name of Way. They had had him under surveillance for six weeks and when they arrested him they found an ounce of herione on him. They took him into custody.

At that time he told the police he had bought the
page 156 } herione from a man named Blackie Toy the proprietor of a laundry on Leavenworth Street.

The agents went down to Leavenworth Street and they found a laundry run by James Wah Toy.

Toy opened the door and Agent Wong told him that he was calling for some laundry and Toy told him to come back at 8 o'clock and started to close the door. Agent Wong took his badge from his pocket and said "I am a federal narcotics agent." Toy slammed the door and started running down the hallway through the laundry to his living quarters at the back where his wife and child were sleeping in a bedroom.

Agent Wong and the other federal officers broke open the door and followed Toy down the hallway to the living quarters and into the bedroom.

Toy reached into *nighstand* drawer. Agent Wong thereupon drew his pistol, pulled Toy's hand out of the drawer, placed him under arrest and handcuffed him.

There was nothing in the drawer and a search of the premises uncovered no narcotics.

"One of the agents said to Toy * * * (Hom Way) says he got narcotics from you." Toy responded, 'No,
page 157 } I haven't been selling any narcotics at all. However, I do know somebody who has.' When asked who that was, Toy said, 'I only know him as Johnny. I don't know his last name.' However Toy described a house on Eleventh Avenue.

The agents left for Eleventh Avenue and found the house. They entered and found one Johnny Yee in the bedroom.

After a discussion with the agents, Yee took from a bureau drawer several tubes containing in all just less than one ounce of heroin, and surrendered them. Within the hour Yee and Toy were taken to the Office of the Bureau of Narcotics.

Yee said the heroin had been brought to him some four days earlier by petitioner Toy and another Chinese known to him only as 'Sea Dog.'

"Toy was questioned as to the identity of 'Sea Dog' and said that 'Sea Dog' was Wong Sun. Some agents, including

Agent Alton Wong, took Toy to Wong Sun's neighborhood where Toy pointed out a multifamily dwelling where he said Wong Sun lived. Agent Wong rang a downstairs door bell and a buzzer sounded, opening the door. The officer
page 158 } identified himself as a narcotics agent to a woman on the landing and asked "for Mr. Wong." The woman was the wife of petitioner Wong Sun. She said that Wong Sun was "in the back room sleeping." Alton Wong and some six other officers climbed the stairs and entered the apartment. One of the officers went into the back room and brought petitioner Wong Sun from the bedroom in handcuffs. A thorough search of the apartment followed, but no narcotics were discovered."

But our position as far as the first element as to arrest would be that when they restrain a person they have to have the proper cause at the time of the arrest. I think that's clear from all of the cases.

Now, in this particular case the question comes down to what is meant by "probable cause" and how much do you need, and consider the facts in this case to establish probable cause.

Now, the Constitution of Virginia says that general warrants, you cannot issue a general warrant "without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly
page 159 } described and supported by evidence, are grievous and oppressive, and ought not to be granted."

Now, the Draper case, the Wong Sun and Draper case deal with probable cause; the Draper case is without a warrant and the Wong Sun case is with a warrant.

Now, all of these cases—

The Court: (interposing) Wong Sun is the one that got the warrant and it being merely a tip from somebody—

Mr. Harrigan: I think Wong Sun and the Draper case applied the from that you can't arrest on information provided unless the hearsay is credible and comes from a credible source and it sufficiently described the person so you can go right to them, or within sufficient description that you can go and arrest the man. You must be certain you have the right man.

That was the Jones case where it was all on an informer, but the man was picked up, his clothing and where he would be and so forth, so they arrested him.

Wait a minute. Draper was without a warrant and Jones was with a warrant. But the Draper case holds
page 160 } that hearsay is sufficient to arrest without a warrant.

That's all we have in this particular case is hearsay.

Then, the question comes down to whether that hearsay information is in fact sufficient to arrest here.

Now, all the cases, Wong Sun, Henry, practically all of them say probable cause to arrest with a warrant certainly is not more than is needed to arrest without a warrant. In fact, probable cause to arrest without a warrant, as a practical matter, if anything, that you need more probable cause to arrest without a warrant than you need with a warrant. And the probable cause to arrest is the same probable cause and same tests used to get a search warrant or an arrest warrant, either one of those two.

The question here comes down to whether they did in fact have the type of probable cause necessary in order to make an arrest.

What do they have? The evidence shows that Cole was in the station, and I think Cole and Davis are the two key people in this particular situation.

page 161 } Cole is in the station and he hears Rockwell has been shot and descriptions come out and basically what he got out of the description was there was a man, dark trousers, dark complexion, and or Spanish or Mexican descent; and there was then some confusion. No height, no weight, no age, no nothing; just dark trousers, dark trench coat, and Spanish or Mexican descent. And yellow socks through the whole broadcast. Through the whole *broadcast* everything that this man had on from the suit to the trench coat differed but the yellow socks didn't.

He was supposed to go to the area of Washington Boulevard and Patrick Henry Drive for the purpose of looking for this man, and from the tapes we see "our guys all over the place" looking for this man.

As he drives down the road he looks to the north side of Washington Boulevard and he sees a man in a yellow shirt and dark trousers and tennis shoes with a towel wiping his face as he walks along. I don't know how he's wiping his face. He wasn't even close. I mean, there isn't any way in the world you can say because this man had on dark trousers therefore I believe that he's the one that's involved and he's walking on the street.

page 162 } The proof of that is that he didn't even stop the car when he saw him. He kept right on going. That's how convinced he was at that time that this man had something to do with it.

So he kept right on going. He went around the block. As he cruised around the block he looked down the road and saw

the man again on the other side of Washington Boulevard. As he watched he said the man, as he started down, the man ran between two houses.

Now the question then is whether simply because he ran between two houses he has probable cause to believe that this man was involved in the Rockwell shooting. And the evidence is clear at that point that he didn't know who he was. He didn't even know he was John Patler; he didn't know he was an ex-member of the Nazi Party.

There is a man with a white towel running between two houses.

The Wong Sun case talks about the value of people running. They said this on page 415. It says:

"Although the question presented here is only whether the petitioner's flight justified an inference of guilt page 163 } sufficient to generate probable cause for his arrest, and not whether his flight would serve to corroborate proof of his guilt at trial, the two questions are inescapably related. Thus it is relevant to the present case that we have consistently doubted the probative value in criminal trials of evidence that the accused fled the scene of an actual or supposed crime."

The quoted *Alberty v United States*, 162 U. S. 499, 511, where they said:

"* * * it is not universally true that a man who is conscious that he has done a wrong 'will pursue a certain course not in harmony with the conduct of a man who is conscious of having done an act which is innocent, right, and proper,' since it is a matter of common knowledge that men who are entirely innocent do sometimes fly from the scene of a crime through fear of being apprehended as the guilty parties, or from an unwillingness to appear as witnesses. Nor is it true as an accepted axiom of criminal law that page 164 } 'the wicked flee when no man pursueth, but the righteous are as bold as a lion.'"

So the question here is whether this man if he did run between two houses, and that is the testimony we have, whether that generates a sufficient element of probable cause to believe he committed the Rockwell murder and I think the answer to that is very clear. Inspector Cole didn't even know who he was. The man might have lived there or he might have

lived up a couple of houses. There could have been any number of reasons for his being there.

The Court: Mr. Harrigan, is it material as to what Inspector Cole thought since he didn't arrest him; or is it material as to what the information was that the arresting officers had?

Mr. Harrigan: Yes. It's material, Your Honor, because the source of probable cause to arrest is the source of the problem, I think. If that were not so a police officer could call in to pick up practically anybody and that man could be picked up and all the arresting officer would have to say is "I have sufficient cause to believe that the man committed
page 165 } something because Inspector Cole told me so, and he's reliable."

Unless you can go back and test the source and the facts that were in the possession of Inspector Cole there's no protection at all.

The Court: But aren't you inserting into it the element of actual truth that Inspector Cole must be putting out a true report and that the recipient of that report, the arresting officer, must be justified in believing it. Isn't it that the report says it may not necessarily be true but merely that it may be probable?

For instance, suppose the defendant should be acquitted and should subsequently sue the arresting officer for false arrest on the theory that he was acquitted and it was shown he was not guilty and therefore it's established beyond doubt that he didn't do it, wasn't the man who shot Rockwell. If that should come to pass would the arresting officer be civilly liable to him in damages because he was in fact not the man who committed the crime or would the arresting officer be protected because he had probable cause to be-
page 166 } lieve that he was the man who did it, whether that in fact be truth or not.

Is the test truth or probable cause?

Mr. Harrigan: The test would be probable cause to believe that he committed the offence, but the officer would be protected in that particular situation by the fact that a grand jury—there's a presumption that if you get an indictment, there's probable cause; there's nothing conclusive about it. But the presumption is there; he's got a lot of presumptions going for him, which in a civil case the test is different as to whether the officer would be liable or not because he has presumptions working his way and so forth.

The Court: Well, I think that's the point Justice Douglas

was deciding in the Henry case when talking about probable cause. It doesn't have to be sufficient to establish guilt. It doesn't have to be evidence. On the other hand, it has to be more than just good faith. Not even strong reason is enough, but it must be facts and circumstances known to the police department which would warrant a prudent man in believing that a crime had been committed and the defendant had committed it.

page 167 } Mr. Harrigan: Now, we have Davis.

There are two things to consider: that Davis heard both descriptions. He heard partly the description about the dark trousers and dark complexion and Spanish or Mexican descent, and no doubt the yellow socks, and he heard Cole's—I believe Cole's was basically "a man ran from me. He had a yellow shirt and sneakers and dark pants on."

Now Cole didn't say arrest him when he called. He didn't say pick him up. He said, "a man ran from me" which was a conclusion of his.

But the question is—let's take what he said. "A man ran from me and he's got a yellow shirt on and dark pants." Now does that justify one to believe that that particular man was guilty of the Rockwell murder? I don't know where the connection of the link is there. There was nothing else said there except "A man ran from me" who had a yellow shirt, with dark pants, and sneakers.

Now, maybe Davis assumed this: that everybody was looking for somebody. But I didn't hear it on the tapes. It may have raised an inference in his own mind but
page 168 } where would that raise an inference in a reasonable man's mind?

In view of the other evidence we have that the description was of a Spanish or Mexican descent. Look at him. He doesn't look Spanish or Mexican. I think you would have to be stretching your imagination to claim he looked Spanish or Mexican.

The dark trousers and yellow socks. The testimony was he had dark blue socks on.

There was dark clothes. He didn't have dark clothes on. He had olive pants and a yellow shirt.

The descriptions weren't even close.

Our position is that basically what they did, they stopped him as soon as they recognized him as a former member of the Nazi Party. At that point they were going to haul him in, evidence or no evidence, and that's exactly what they did.

So, based on the cases that I've cited and specifically the Wong Sun case which clearly states that you have to have

much more evidence than suspicion, and I think that's what they had in this case, suspicion; they would, have would have picked up anybody that ran.

But, based on that and other thoughts cited in page 169 } this memorandum, we move to have the arrest declared illegal with no probable cause.

The Court: Mr. Hassan?

Mr. Hassan: If the Court please.

Let us start first with that Draper case. Insofar as the arrest and probable cause is concerned, the Draper case stands for one thing and one thing only.

The court says that the term "probable cause" as used in the Fourth Amendment and the term "reasonable grounds" as used in the Narcotics Act are substantially equivalent. And that's all it stands for. It just simply sets forth the probable cause but it doesn't go into what probable cause consists of.

But when you get over into this Henry case, *Henry v United States*, you get the real test set up as to just exactly what this probable cause that the court talks about and the arrest really means. And this court says:

"Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed."

page 170 } In other words, it's what the prudent man in the shoes of the officer must see and know to permit him to believe that the defendant was violating or had violated the law. It's what's in the mind of the officer. It's what is reasonable in his mind causing his action that governs. It's what a prudent man in the shoes of the officer would do.

What are the facts in this case? They're not some Chinaman sending somebody with a bunch of agents to chase somebody out the back door. That's all the *Wong Sun* case is, some Chinaman turning against some other Chinaman.

This is a different type of case. This is a case where at 12:02—you heard the tape, the phone calls are coming in two or three of them at a time. A man has been shot at 6021 Wilson Boulevard and there are repeated calls.

The first indication of who they were looking for up there was when a barber called and said that he doesn't see him. The barber chased him but doesn't see him and a boy told him he was Mexican or Spanish, dark complexion, page 171 } yellow socks, dark suit, trench coat. That was written down when it was given on the telephone

and handed to the dispatcher and he related it on the air. The officers who were on the air wrote the description down. Detective Faulkner wrote that down. He already had the description and didn't pay any attention to the other description. He went to the area and looked. Then that was repeated fifteen or twenty times. It was even repeated once after it had been changed. By cruiser 103 to Detective Kadel when he said "not necessarily Mexican, but dark complexioned."

And then when all of this was repeated, you have another scout car, traffic one, I believe it was traffic one who came on the air and said they saw some boys down at Bon Air Park near McKinley Road told them there was a man and they told them to get out of the area. The boys said he was wearing a dark or light gray suit and that went out on the air.

Then you heard Inspector Cole say—and what he said was "I spotted him at Washington Boulevard and Inglewood. He spotted me and took off running behind these houses and I can't locate him." Any unit close by Washington Boulevard and Inglewood responded. That's what he said.

page 172 } Then he came on the air and said "I spotted a man, it's the same man but he doesn't have a coat on now. He has on a yellow shirt, he has on tennis shoes, dark trousers, and was standing at the bus stop, saw me and took off in the immediate area.

Okay. That was referred by the dispatcher.

Now, Detective Davis and Faulkner and *Sargeant* Moehler and Inspector Cole all were looking for the man who answered the description who answered the description who was in flight from 6021 Wilson Boulevard.

Not only did the defendant answer the description, but anyone who is in flight on a cold day in the winter from 6021 Wilson Boulevard down that street and across that park over the Washington Boulevard would have needed a towel to wipe the perspiration off.

His shirt was wet and his pants were wet. Everybody said he was soaking wet.

Now, the Rees case was an entirely different type of case from this case. In fact it doesn't stand for anything on probable cause. It's based on the silver platter doctrine and this is the case that was approved all the way through New York and then kicked out in the Federal court because it was established and carried on a silver platter

page 173 } doctrine.

That's all it stands for, and anything else is just pure dicta.

The Wong Sun case. The court said that flight added nothing to probable cause because the original action in knocking in the door was improper.

This is an entire case of flight. This is flight from the shooting, flight from the officer. And that's governed by two other cases not mentioned here. One of the very latest is *United States v Melindy*, 375 Fed. 2d, and it comes out of the Seventh Circuit, and that court case says the probable cause for an arrest is grounded on facts and circumstances within the knowledge of the arresting officer and of which he has reasonable trustworthy information that the person has committed or is about to commit an offense.

I think it's reasonably trustworthy when you're receiving police broadcasts. I think it's reasonably trustworthy when you have a flight, because in the same issue of this particular book the court held in *Tiner v the State*, 182 Southern 859, an Alabama case, it was held—this is one where page 174 } the sheriff was shot to death—that it was sufficient to establish reasonable grounds for arrest by officers looking for the perpetrator.

And that's not the only one on flight. We have another one which was decided in an entirely different section of the country. In the *State of Washington v. George Van Baxter*, 413 Pacific 2nd, 33384, Supreme Court of Washington.

The Supreme Court held that arresting officers had probable cause to believe that a felony had been committed by defendant and they could arrest him without a warrant, where they first saw defendant at 4 a. m., he appeared to have come from behind or out of some business houses in an area containing just a few such businesses. He was wearing one hat and was carrying two others and the police automobile was driven past him and it was stopped and backed up, and he took flight. The flight was decisive.

In addition, the defendant failed to object before the trial for suppression as well as up through the time of the trial.

The Court: What court was that?

Mr. Hassan: That's Pacific Reporter, *State* page 175 } v *Van Baxter*, 413 Pacific 2d, State of Washington.

There are some other cases here, Your Honor, that have been discussed and set out. And on the reliability of this information from a police officer we have the *United States v Francesca*, 38 U. S. 102.

And in this case, Your Honor, I think their information as to the death of Lincoln Rockwell, as to the flight of the person

who perpetrated it, as to the description and movements of the perpetrator reasonably would lead a prudent man to expect him to emerge from Bon Air Park. And when he saw a man wiping his face with a towel, soaking wet, he had very reasonable grounds to believe on all these facts and knowledge that this is the man to look at and when he runs from you, right then and there it was reasonable grounds to arrest him and that's what was done.

The Court: Mr. Harrigan, do you wish to respond?

Mr. Harrigan: The only response I have is that it seems to me you have got to come down with what we believe to be nothing more than a vague suspicion of Inspector Cole based on what he thought was flight which wound up
page 176 } when the man was two blocks away from him
standing at a bus stop which leaves a lot to be desired, and why, when he's standing out in the open.

Whether there is even a vague suspicion is simply based on his impression that some man was running from him, and he was contradicted in the court room when he said "I don't know whether he was or not." Can this be transferred into probable cause? Our position, Your Honor, simply is this: it cannot. It's still vague suspicion and you can't go and get an arrest warrant or search warrant based on that type of information for a magistrate, and therefore, you shouldn't be able to arrest without a warrant.

That's all.

The Court: In the opinion of the court the arrest was based on probable cause.

The test as I understand it to be is that the arresting officers have such a state of facts, whether hearsay or not, which would justify a prudent man in concluding that a crime had been committed and that the defendant had committed it.

In this case the arresting officers had a broadcast, a source which I consider that they had reasonable ground
page 177 } to believe reliable, coming from the police dispatcher, that probably a homicide had occurred.

The tape then reveals that all other broadcasts were shut off and from my listening to it there were no other broadcasts so that everything that was said on the tape then was related then to the Rockwell shooting. Everything an officer heard then he knew was connected to that case.

To my mind, between the initial broadcast telling of the shooting and the giving of the description, initial description of the suspect as established by Inspector Cole's subsequent transmission relating to the man, there was no other man being discussed. This was the man the entire police depart-

ment was looking for; this was the only man the police radio was discussing. Every officer listening to that radio was listening to only one subject for about half an hour and those broadcasts were relating to this man, the suspect, that individual. However it was phrased, they had no reason to think it related to anyone other than the suspect in the Rockwell shooting.

Now, the description of the man, the suspect, changed in the course of this investigation. But it was information which they had grounds to believe and consider reliable, which is shown by the map which is in evidence for the purpose of this hearing showing the path of the man believed to be in flight. Then when he appeared then perspiring in that location that furnished further reasonable ground for them to believe this was the suspect they were seeking in connection with this particular offense.

Inspector Cole, too, was an individual whom other policemen listening to the radio had reason to consider as a source of reliable information. The tenor of the broadcast was tended to have them believe he was issuing orders in connection with it.

He came up on the radio with a description which said the man is not now wearing a coat but is wearing a yellow shirt and proceeded to give a description which is the exact description upon which he was arrested.

The man who has been prejudiced here is the arresting officer, Detective Faulkner. He stated the man met that description; he did look to him as a person who was Mexican or Spanish descent; he did have dark hair. Whether those things were true or not it seems to me to be beside the point because the test is whether or not the arresting officer has information which is true or correct. If it were not so, police work would be impossible. The policeman pursuing a fleeing suspect would have an impossible burden.

That ultimate decision has to be made in the calm of the court room with juries here and with all those protections thrown around the accused. But those protections are not available in hot pursuit for a fleeing suspect from the scene of a murder and the burden which is upon the police at that point is not so stringent. All that is required of them then is that they have probable cause concluding that the crime had been committed and that the suspect had committed it.

In my view they had such a state of facts before them, so

the motion of the defendant relating to the arrest is denied.

I take it that the next successive step to that would have been a motion to suppress any evidence seized as an incident of the arrest?

Mr. Harrigan: That's correct.

The Court: And that's the real purpose of page 180 } this, and that's denied.

Mr. Harrigan: Exception.

The Court: Exception noted on the grounds stated in argument.

Gentlemen, it's now 7:10 and I think it would be quite a burden on all the court personnel, including the defendant and counsel here to continue this now.

There are two other questions to be resolved. I'm at your disposal and will here them if everyone wants me to hear them tonight.

If time is not that much of an importance to come back to trial Monday, I'll hear them Friday morning.

Mr. Hassan: The question of the search on Lee Highway is actually a moot question.

I maintain the affidavit is fine and will not stipulate that it's a bad affidavit. I'm not going to use the evidence and will be glad to give it to them but the affidavit is fine.

The Court: Are you then saying, Mr. Hassan, you don't propose to use any of the evidence?

Mr. Hassan: That which was seized on Lee Highway page 181 } way.

Mr. Harrigan: Our position is that it was an illegal search. They searched out there and as a result of the search out there they searched somewhere else and our position is that it was all a part and parcel of the same thing.

The Court: Do you want to be heard on it?

Mr. Harrigan: I would. I'm not going to be here Friday.

Mr. Hassan: I think this is absolutely unreasonable.

The Court: All right gentlemen, that's enough.

Under the circumstances I think we better set it for 10:00 o'clock Friday morning and will continue the case until that time, for the continuance of these motions.

* * * * *

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PROCEEDINGS

The Court: All right, Mr. Morris.

Mr. Morris: If Your Honor please, this is a continuation, as the court well knows, of our Wednesday session wherein

Sam Ervin

we now would like to argue the Highland Court search warrant and as indicated on memorandum and points of authorities, the defense will call but two witnesses to show the affidavit and search warrant were secured illegally as per the motion submitted to the court.

Your Honor, at this point I would like to call Mr. Sam Ervin, as the defendant's first witness.

Whereupon, SAM ERVIN, was called as a witness by defense and having been duly sworn was examined and testified upon his oath as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. Kindly state your name, sir.

A. Sam R. Ervin.

Q. Are you related to the accused, Mr. Patler?

A. Father-in-law.

page 185 } Q. He's married to your daughter?

A. Yes.

Q. Now, Mr. Ervin, calling your attention to on or about the 16th day of September, were you served with any search warrant? Was a warrant served on you?

A. I *wan't* down there.

Q. Did there come a time when you found one attached to your door?

A. Yes.

That (indicating) looks like what I found attached to the door.

Mr. Morris: Your Honor, at this point the defense would like to enter this into evidence.

Mr. Hassan: No objection.

Mr. Morris: (continuing) as the defendant's number one.

The Court: It will be received and marked as defendant's number one.

(Whereupon, Defense Exhibit #1 was marked and entered into evidence.)

By Mr. Morris:

Q. Does Mr. Patler have access and liberty to your home in Highland County, Virginia?

Sam Ervin

page 186 } A. Yes.

Q. He's a member of the family there?

A. Yes.

Q. Does have his own area to stay and work?

A. Well, he has the run of the place like anybody else.

Q. Does he have a key to the premises?

A. Yes.

Mr. Morris: No further questions, Your Honor.

CROSS EXAMINATION

By Mr. Hassan:

Q. Now Mr. Ervin, did there come a time when Mr. Patler established your farm as his place of abode?

A. Yes. He stayed down there. Him and my daughter stayed down there when I had my heart attack and they stayed down there for I guess, oh, a couple of months and took care of my children who were in school. The twins were in school down there. They stayed there with them and my wife came back up here.

Q. Those were your children in school down there?

A. Yes.

Q. They were not his children?

page 187 } A. No.

Q. When was that?

A. That was, I guess February or March. Somewhere along there.

Q. February or March of 196—

A. (interposing) I had the heart attack the last week, I believe it was the last week of January and they were down there probably a couple of months when I had the heart attack and my wife came on up here.

Well, at the time they came back and forth all the time, but at that time they stayed there approximately a couple of months.

I don't remember exactly the time.

Q. That's the last time they stayed there regularly?

A. Well, we lived at both places. He was down there—we were down there probably almost half the time and up here half the time and went back and forth. So actually we lived at both places.

Q. By "we" you mean you, and your wife, and your children

A. No. I mean the whole family. They, John and Alice and

Sam Ervin

his family lived with us. The whole family lives
page 188 } together.

Q. You don't consider them a separate family?

A. No. They're part of the family.

Q. Now Mr. Ervin, would you draw us a map of your farm showing the property down there?

A. Well, I'm not an artist.

Q. Neither am I. Mine is worse than yours.

A. What do you mean by a map of the farm?

Q. Let me show you one I sketched out and see if it's accurate; or I had sketched out.

Is that about what the farm looks like? There (indicating) is the road, the road into the house, a barn, another barn up here, a dry creek, a road that runs down beside your house.

A. No sir.

Q. It doesn't look like that?

A. No sir, it doesn't.

Q. Let me see you draw it for me, then.

A. Mine probably won't be much better but those things aren't going to the right direction.

The proportion is not right. It's kind of a general area of the buildings but there's a lot more. This is correct there (indicating). It's not proportioned right.

page 189 } Q. Is this the creek?

A. No. That's the line. It goes up there and back down there. But there's a lot more here than down here so this is proportioned, the forty acres, and this isn't over ten acres here.

I'm not an artist. I can't draw.

But these are the general areas.

Q. Where's the creek?

A. This is the creek and also a creek comes down here.

Yes.

Now with relation to the creek where was the tree?

A. What tree?

Q. The one they cut a portion out of.

A. Well, I don't know what they cut. I *wan't* down there. I seen trees cut down there. In fact in September down there—

Q. (interposing) I'm talking about where they cut the slugs out of the tree.

A. I saw trees cut, but I don't know where.

Q. Where are they located?

A. There's a man down there I sold timber to
page 190 } and he cut some down there.

Sam Ervin

I don't know what they cut, I can't say definitely what they cut or what he cut. I wasn't down there. It would all be hearsay.

Q. Was any tree cut between the tree and the barn and your house; any trees cut?

A. There's trees cut up in here (indicating) and over in here (indicating). I can't testify as to who cut what because I didn't see anybody cutting anything.

Q. Now, you have two barns?

A. No. There's one barn.

Q. One barn.

You have a woodshed?

A. Yes. But I didn't have that on there (indicating). There's a woodshed right here (indicating).

Q. And is this area fenced in?

A. That's a yard fence.

Q. Yard fence?

A. Yes sir.

Q. There were no trees cut within that fence, were there?

A. No, no big trees down here.

Q. Everything was beyond the creek?

page 191 } A. There's some trees up in here (indicating)
in this area and there's some trees up in this
area (indicating).

The Court: Were they cut, Mr. Ervin?

The Witness: I don't remember seeing trees cut up in this area. There's trees cut up in here and here (indicating). I didn't look particularly. There could have been trees cut in this area.

By Mr. Hassan:

Q. You saw trees cut over in here and in here (indicating)?

A. Yes.

Mr. Hassan: If Your Honor please, I would like to have that marked as Commonwealth's One for identification.

(Whereupon, Commonwealth's Exhibit #1 was marked for identification.)

The Witness: That's a very poor sketch.

Mr. Morris: I would like to ask what purpose that has, whether it's an attempt to show this alleged tree, wherever

Sam Ervin

it is, is not within a certain area, and before page 192 } that we would object to it as being irrelevant and immaterial. It shows nothing.

Mr. Hassan: It shows nothing but what he says.

Mr. Morris: I think it—we're only saying that the affidavit was illegal.

The Court: I'll receive this exhibit as being Mr. Ervin's rough sketch of the property but nothing has been proved thus far with respect to it but it can be used for the bases of support of the testimony.

Mr. Morris: All right.

(Whereupon, Commonwealth's Exhibit #1 was entered into evidence.)

By Mr. Hassan:

Q. Now Mr. Ervin, did you find any indication that anyone searched your house?

A. What do you mean? I wouldn't know if they had or they hadn't.

Q. You wouldn't know whether your house had been entered or not?

A. No. The whole family used it and I wouldn't have seen—I wouldn't have noticed if something hadn't been where it was or not. I don't know. I wouldn't know whether it was searched or not.

page 193 } Q. And you saw no evidence of a search within the courtyard of your home, within the fence around your residence?

A. Well, this was tacked on the door of the house and it said they had searched the place. Now I don't know what they searched.

Q. Did you find any trees that any anything cut out of them, not cut down but just cut out of them, within that courtyard?

A. This was—there was no big trees inside the fence, the yard fence. There was nothing but some small ones.

Q. Now, have you read the transcript of the testimony of the officers who served that warrant and conducted that search?

A. No. I talked to the sheriff down there but he knew nothing about it. He hadn't even known it happened until after it happened.

Q. You didn't talk to the state trooper?

Sam Ervin

A. No. But the local officers weren't even—didn't even see it down there. They didn't even know anything about the warrant.

Mr. Hassan: I have no further questions of page 194 } this witness.

Mr. Morris: I have just one.

REDIRECT EXAMINATION

By Mr. Morris:

Q. Mr. Ervin, did you consent yourself, or any member of your family to have that property searched?

A. No.

Mr. Morris: No further questions.

The Court : Gentlemen, can we now narrow this inquiry by ascertaining what is sought to be suppressed on the basis of that warrant?

I think on the return on the back of this warrant they list three empty cartridges and three spent slugs.

Now, is that all that was seized under this warrant?

Mr. Hassan: That's all.

The Court: That's all we're talking about?

Mr. Morris: Yes, Your Honor.

The Court: Mr. Ervin, do you have any personal knowledge, not what has been told to you, as to where those arms were located on your property, the three empty cartridges and four spent slugs?

page 195 } The Witness: No sir, Your Honor.

The Court: No further questions.

May this witness be excused?

Mr. Morris: Yes, sir.

Your Honor, we're not going to call any more witnesses, and since the search warrant and the affidavit is in evidence we move to have whatever the police found at that residence suppressed as being illegally secured.

I refer the court to the Code section applicable to search warrants and subsequent seizure therein. Our particular Code section, surprisingly enough—

Mr. Hassan: (interposing) I'm going to object to the argument at this time.

If there's going to be evidence, I think I should have an opportunity, or should I go home.

Mr. Morris: He said he didn't have any witnesses.

Mr. Hassan: That's not rue. I didn't say I wasn't going to put on evidence.

The Court: Go ahead.

Mr. Hassan: If Your Honor please, we have page 196 } the court reporter here who took the testimony of the officers who participated in the search and I'm going to offer their testimony from a previous trial to the court at this time. That is the testimony of Lester J. Miller, page 207-208, and cross at 208; C. L. Bradley, state investigator, page 208-210, and cross at 210 to 229; and Stuart Crickenberger, page 296-302.

The Court: Does the defense object?

Mr. Morris: Strongly, Your Honor.

As I understand the law in Virginia the best evidence rule is the witness himself and always has been. In this particular case, it would be any witnesses he may refer to in the transcription. There is no showing that these witnesses are not available or even subpoenaed for this particular hearing. Why he would try to get in the transcript without producing the witnesses I can't understand.

We object strongly.

The only time in Virginia that you are permitted to use a deposition or transcript is in a rape case.

Now he has showed nothing to the court as to why these witnesses aren't here. We produced our witnesses page 197 } and he has the same burden to produce his. And if he's going to throw a transcript into the court I think it's highly inadmissible unless he shows he cannot produce the witnesses to testify directly from the witness stand.

You can't do it under Virginia Statute unless it's a rape case.

Number two: unless he shows he subpoenaed these witnesses and they're not available, we strongly object to the tender of the transcript.

The Court: Mr. Hassan?

Mr. Morris: (interposing) I would say that the only reason he could enter that transcript would be to impeach a witness who testified.

Mr. Hassan: Not for the purposes on a motion on a search warrant. This is not the evidence connected with the innocence or guilt of anyone. This is a question of validity of a search warrant and is purely a civil matter it has previously

been testified to under oath and has been subjected to cross examination and has been testimony in the presence of the defendant and for the purpose of this hearing it's perfectly admissible.

page 198 } The reason that the witnesses are not here was that there was indication that there would not be any more necessity for testimony after considerable conversation about the face of things and it was too late to subpoena those who engaged in it.

Detective Crickenberger has been engaged in the ancient and honorable sport of hunting for a week and I cannot get in touch with him at this time.

C. L. Bradley is located in Salem, Virginia, and Mr. Miller is located in McDowell, Virginia, and consequently they're not available to be produced within the period of time that we knew there was to be testimony other than the affidavit and this came to us, information came to us around 7:00 p.m. Wednesday, which is certainly an unreasonable time to expect us to have our witnesses here.

Mr. Morris: If Your Honor please, just so the record is straight, this did not come through the Commonwealth Attorney only. This date was set mutually for both of us and Commonwealth Attorney's office—

Mr. Hassan: (interposing) Let's get the record straight then, because the first time there was any indication that there was going to be any witnesses on this phase of the case was when you announced it to the court that you wanted Mr. Ervin to be excused and that you were going to get him back on five minutes call because he had some business to take care of and you were going to have him testify to this.

Up to that point we assumed that all the testimony was on the first point and you said you were—

Mr. Morris: (interposing) May I continue?

If your honor please, I don't know anything about his assumptions, rightly or wrongly. He can assume all he wants to. The thing is we approached the court and the court contacted the Commonwealth Attorney's office at which time it was agreed this would mutually come about.

Not only was he aware of it, he had Wednesday, he had Thursday, and Friday, and now for him to say that he couldn't get this person because of the ancient and honorable sport of hunting would seem to me to be facetious. That's tough.

As far as Bradley being in Salem, he got him the first time and he can get him again.

As far as Tom Miller being in McDowell, he got him the first time and he can get him again.

page 200 } We strongly object to Mr. Hassan submitting the transcript to the court without having the witnesses here, too.

The Court: Mr. Hassan, was this transcript filed in the County court or is it just the parties copy.

Mr. Hassan: This is the commonwealth's copy of the preliminary hearing which he also has a copy of. It was forwarded at the conclusion of the preliminary hearing because of the Notice of Motions.

The Court: I don't see any warrant. There's a statute which covers situations like this but not this particular situation. I think the objection is well taken.

The transcript is not the best evidence and will not be received.

The objection is sustained.

Mr. Hassan: Exception, Your Honor.

I would then move the court for time to produce the witnesses, and have them testify. That would be witnesses Crickenger and C. L. Bradley.

The Court: Well, if I have understood the point you gentlemen have made in argument, the defense contends
page 201 } that this warrant is invalid because the affidavit upon which it is based was invalid upon its face.

Mr. Hassan: First of all, I say there was no necessity for a search warrant at all.

The Court: These representations to items found in the open fields and wooded area and not within the curtilage of the farm—

Mr. Hassan: 122 Virginia 783, *Beyer v. the Commonwealth* sets forth the curtilage and the curtilage is the courtyard and there is testimony I would offer to show there was nothing taken from the curtilage; that these were taken from the other side of the creek in a wooded area, mixed with pastureland.

And this is what—

Mr. Morris: Object to that.

Mr. Hassan: (continuing) —I would intend to prove.

Mr. Morris: There's no evidence to that effect.

The Court: I'm asking him, Mr. Morris, what he proposes to produce, so he's just answering my question.
page 202 } Mr. Hassan: I also contend that this is nothing out of the way. Mr. Ervin has just shown you where the courtyard was, where the creek is, and even if the curtilage isn't that little fence around the house which is that little courtyard, certainly under the natural boundary in the Beyer's case, it would be the creek. So this is even beyond the creek.

This would go of course to the question of suppression, rather than the question of the search warrant. In *Mechlin v. Chaplin*, and *Zimmerman v. Bedford* we have all the criteria for a valid search warrant and long before those and even our present Federal cases following that, and way beyond that.

What is protected is the personal rights from unreasonable search. There are no personal rights beyond the curtilage; there are no personal rights involved outside the abode. All that is—well, the home of the parents is not considered the home of the daughter and her husband although they might visit there and have things there. There is a recent case which sets that up and was upheld by the Supreme Court of the United States in that particular regard.

The Court: Well, you gentlemen I take it are
page 203 } not in a position to tell me by stipulation where on this diagram that this was found. Mr. Ervin didn't know, and if you can tell me I can rule on it now.

I don't propose to rule in a vacuum but I can certainly tell from the face of the warrant whether it's legally sufficient. I can go that far.

I find myself in the position I was in on Wednesday. If you all don't want to produce all the witnesses or if they are not available, I still want to hear them before I make a ruling, based on facts.

I won't make a ruling in the absence of facts when I know the facts are available.

I have looked at the affidavit attached to this warrant and it appears to me that it is quite insufficient and if this ruling is to be based on the sufficiency of the search warrant, the warrant is going to have to be held invalid and any evidence seized under the search warrant is to be suppressed.

Now if the commonwealth wants an opportunity to show me it wasn't seized under the warrant or that the warrant is immaterial—I don't suppose there would be

page 204 } any prejudice to the defendant as long as there
is no mention made of it in the trial.

These witnesses are going to be here Monday, aren't they Mr. Hassan?

Mr. Hassan: No. I didn't subpoena Bradley for Monday, but I'm sure I can get him here by phone call Monday. Mr. Crickenberger will be here Monday. I subpoenaed some for Monday, some for Tuesday, and some for Wednesday.

The Court: I think the defendant is entitled to know what evidence he is going to have to contend with and what he isn't and he ought to know it on the outset. That is why the motions were set ahead of trial, now before we have these rulings made.

But I still think the defendant ought to know what evidence he is going to be confronted with before the trial begins.

So if you propose to put on any evidence of the location of the cartridges and slugs—

Mr. Morris: (interposing) If Your Honor please, I would like to make a comment.

We introduced a code which the court is obviously going to rule on which would be an affidavit and insufficient warrant. However, the affidavit we submitted to the court and it is in evidence and once a piece of paper is in evidence for all reasons it may be used and I respectfully request the court to read the commonwealth's affidavit and read their search warrant and where it says specifically without any hesitation on two definite areas that these things were in, if Your Honor please, the curtilage.

Now we put on our case, we put on our witness to show this was an illegal search, that the property seized was within the curtilage of the farm house.

There is no question about it. It's quite plain and *unambiguous* that it was located on the property and so forth within the curtilage.

The Court: You're referring to C. L. Bradley's return on the back of the warrant?

Mr. Morris: I'm referring to the affidavit, on the back, and the search warrant.

Mr. Hassan: If the affidavit is no good in this respect how can it be good in some other respects?

Mr. Morris: It's sufficient as a matter of law.

This is their affidavit, Your Honor. They say page 206 } it is within the curtilage and they're going to come and impeach their own witnesses. Whether or not it is sufficient as a matter of law is the question.

The Court: The affidavit and the warrant both say within the curtilage of a two-story frame dwelling and pastureland surrounding the said dwelling; rather that is what is said by the affidavit.

And the warrant said evidence being of the curtilage of the property owned and occupied by or in the possession of Sam Ervin and unlawfully contains, contrary to the law, the said cartridge cases and slugs, all evidence being within the curtilage of the said dwelling and not in the said dwelling.

And on the back there is a return by investigator C. L. Bradley which says, withing the Warrant executed in Highland County by search the within described premises and seized the following: three empty cartridges and four sport slugs, which you have explained means "spent slugs".

I think the fact that the *returing* officer recites that it was within the described premises did not necessarily make it within the curtilage whether it was or not as a matter of fact.

Actually, the affidavit is broader. It does not page 207 } restrict the curtilage but also said pastureland surrounding the said dwelling, although the warrant restricts the curtilage.

In any event the affidavit is insufficient as the return of the warrant by the officer does not detract from it and if the authorities had no right to acquire this evidence through their warrant then it ought to be suppressed.

If the commonwealth can show me they had a right to acquire the evidence irrespective of the warrant then it should not be suppressed. I don't want to make the ruling until I have the facts.

But in order to save time I will give the commonwealth until Monday Morning.

Mr. Hassan: If the court will recess for a few minutes I will put in a phone call and see if I can reach Bradley. I know I cannot reach Crickenberger.

The Court: That would be far better for the defense I think so that they may know what the ruling is going to be.

I'll do that. I'll give you a ten minute recess.

(whereupon a short recess was had.)

page 208 } Mr. Morris: If your Honor *please*, so there be no mistake about it in our minds, has the court ruled that this search warrant and affidavit is illegal?

The Court: Yes.

Mr. Morris: The court has made that ruling?

The Court: Yes.

The ruling is that if the commonwealth's right to this evidence is based upon this warrant then this evidence will be suppressed.

If the commonwealth can show the evidence was seized irrespective of the warrant—

Mr. Morris: (interposing) Then your Honor I would make this motion in all fairness to Mr. Hassan and the court.

I wonder if someone could call Mr. Bradley and request that I be present when he is called.

Mr. Hassan: I'll be darned if that isn't—of course he's not going to be present when I talk to my witness. Who does he think he is?

The court has no such authority to make any such order and I object to it even being put on the record. The court can't order me to have defense counsel present when I talk to my witnesses.

page 209 } The Court: Mr. Morris, I don't think I can do that. He hasn't been sworn as a witness and placed under any rule. He has a right to talk to his witnesses in your absence.

Mr. Hassan: If Your Honor please, before you make any other ruling I would like to take exception to the ruling on this warrant in that the commonwealth was not afforded an opportunity to argue the law on the sufficiency on the affidavit.

The Court: We were waiting for your information on witnesses.

Mr. Hassan: I *apologize*.

The Court: I want to get that straightened out on the record.

What is the situation, Mr. Hassan?

Mr. Hassan: The trooper does not go to work until 3:00 o'clock. They're attempting to locate him. As soon as they locate him they will fly him in to Baileys Cross Roads where he will be picked up. They will call as soon as they locate him and what his time of arrival will be.

Mr. Morris: It was my intention to call two witnesses this morning and we found it unnecessary.

page 210 } Mr. Hassan wanted to call Mrs. Patler for testimony as to the location of that tree. We, as a matter of law, will stipulate to that.

Mr. Hassan: Will you stipulate to the photographs?

Mr. Morris: No.

Mr. Hassan: Then I want my witnesses.

Mr. Morris: I don't know what they are.

The Court: Mr. Morris, would you stipulate on the photographs and proceed on that without a witness?

Mr. Morris: I wouldn't stipulate to the photographs for the purpose of this motion.

I would recall Mr. Sam Ervin or call Mrs. Patler and I say that based on seeing the photographs which appear somewhat posed which may have had to have been the case in order to get the different scenes the way they want them.

Mr. Ervin says now that he recognizes that tree and it's located—he could testify now after having seen the pictures.

The reason we would object to the pictures was based on the different pictures taken and there's no question in our mind of a deliberate intent on the way they were posed.

page 211 } If they were aerial photographs, I would be inclined to agree to them, but they're not in our opinion giving a true overall picture of the area.

The Court: Well, then you would want to question him using the photographs to gain sufficient proof as to the question the court has to determine and I doubt if Mr. Hassan would be content with any witness produced by the defense.

This is a purely factual matter and it appears that we are not going to be able to get each side's part of the case today, in order to make a determination.

I'll give the commonwealth an opportunity to present whatever evidence it wants on this point before I rule on it. I want to have all the facts that are available before I decide it.

I'm clear on the points of law covering the decision. The only question which remains is one of fact.

Mr. Morris: If your Honor please, may I—would the court care to call Mr. Sam Ervin as the court's witness
page 212 } and thereby eliminating any possible doubt as to the location of the tree as to whether or not it is within the curtilage?

The Court: Well, the commonwealth still wouldn't be foreclosed from putting on any witnesses. Mr. Ervin, according

to his testimony here a while ago didn't see the tree. He saw a tree. I don't see how he can now give me, just off hand, any testimony as to where these casings and slugs were in fact picked up because he wasn't there when they were picked up and I think I'm going to have to have the answer to that question before I can rule on the factual face of it.

Can counsel make good use of the time this morning by dealing with the legal argument on this. I would like to hear you both on the points of law that cover it and leave it open then for testimony?

Can you also cover perhaps the other search warrant?

Mr. Hassan: If Your Honor please, I'm going to object to legal argument on this motion until such time as the facts are in. Any legal argument has to be related
page 213 } directly to facts which are proved and I would like to reserve my legal argument for subsequent testimony that I will present which I can present at any time the Judge is willing on Monday morning, or even tomorrow. I suppose I could get the trooper here tomorrow but I don't want to argue the case until then. I don't want to put the cart before the horse and argue a lot of law with no facts.

The Court: I gather from the statements you have both made that the only question before the court is was this evidence found within or without the curtilage. Is it not correct that the answer depends upon that fact?

Mr. Hassan: It also depends upon the fact of what the curtilage is and that I want testimony on before I argue it. That's exactly what I intend to produce.

Mr. Morris: We'll put on testimony, Your Honor, and he can cross examine.

Mr. Hassan: That's not satisfactory to me Your Honor.

Mr. Morris: Your Honor, as I understand the law, what may or not be satisfactory to him, is not the tes-
page 214 } timony.

Mr. Hassan: It certainly is as far as my side of the case is concerned.

Mr. Morris: Testimony is whether or not these witnesses know what they're talking about and to benefit the court in coming to a conclusion on this matter I would call Mrs. Patler who is aware of that tree and where these slugs were.

The Court: Is isn't going to save any time because Mr. Hassan would object, therefore, we have to continue the hearing and give him that opportunity, which I indicated I would

give to him and we might as well have it in order and have your witnesses there at the same time.

Mr. Morris: Yes, Your Honor.

If the court please, we are ready to proceed on the search warrant in Arlington. For the purpose of expediting it, I understand Mr. Hassan said last Wednesday that the testimony secured from the local area is of no great value to him and he would not object to it being returned.

What he would object to is the fact that we maintain the search warrant to be illegal.

page 215 } Mr. Hassan: It's quite obvious that the taking of the three letters violated Article 8 of the Virginia Constitution. There's no question about that. They weren't named in the search warrant and I'm going to return them. They are suppressed by the Constitution without any order of the court and the rest is immaterial and irrelevant.

They found a bullet casing which is, in my understanding, out of a weapon but it doesn't happen to be a part of the weapon used. That has no value, and that's all there is. So it's a moot question as far as this motion is concerned, which is a motion to suppress the evidence and that evidence is suppressed and will be returned.

I see no need to argue the matter. But I wouldn't stipulate that the affidavit is no good. As far as the evidence is concerned it wasn't what was called for in the affidavit and the letters are a violation of Article 8 of our Constitution and as such were improperly seized.

Mr. Morris: May I make a comment, then.

Would Mr. Hassan be willing to return any evidence that was secured from the Arlington residence, secured by a search warrant in Arlington County, back to the defendant.

Mr. Hassan: I offered to do that last Wednesday.

Mr. Morris: Then the argument on that would be moot as to evidence that may have been secured.

The Court: All right.

The law permits that the items received under the search warrant were improperly seized or of no probative weight in the case and voluntarily it has been stipulated that they will be returned to the defendant. It does seem to me to be moot to argue the question of the validity of the Arlington search warrant, that is, all evidence received under the Arlington search warrant and not used in this case.

Mr. Hassan: My stipulation is that the three letters and the bullet casing secured under that search warrant were illegal and will be returned to defendant.

The Court: I don't know if that's all—

Mr. Hassan: That's all that is on the back of the warrant.

The Court: Is that all?

page 217 { Mr. Morris: No, Your Honor.

As I understand it, there are more than just three letters and a casing. There are also pictures.

Mr. Hassan: I don't know anything about any pictures. It says three letters between George Lincoln Rockwell and Mr. Patler; one bullet casing.

Mr. Morris: That's good enough for the defense, Your Honor.

In other words, any other evidence which was seized, whether or not it's written on the search warrant, all will be returned?

Mr. Hassan: That's right, because I can only return what I know has been taken.

The Court: Mr. Hassan, I can foresee some item of evidence which is unexplained as to how it was found will show up and you won't know whether it was seized under that search warrant or not and the defense will *alledge* that it was and we'll—

Mr. Hassan: (interposing) We'll take testimony of it. We'll have him sworn and have him take the stand and tell what was taken under oath.

The Court: Is that satisfactory to the defense?

Mr. Morris: Yes, Your Honor.

page 218 { Mr. Hassan: Then we will stipulate that it will not be used in evidence and will be returned to you.

Mr. Morris: I would like also to have Sargeant Kadel testify as to anything he knows, whether it be hearsay or not. The point I'm making is that the three letters and a bullet casing were there, and there were also some photographs, whether they returned them on that search warrant or not. The obvious answer is that they did not.

Mr. Hassan: I'm not going to stipulate that they didn't make a return on them.

Mr. Morris: If they want to swear under oath—

The Court: (interposing) Mr. Hassan, do you want to call witnesses?

Mr. Hassan: I want to call Detective Light.

Ernest G. Light

Mr. Morris: Then I want to call *Sargeant* Kadel.

Whereupon, ERNEST G. LIGHT, was called for examination by the Commonwealth and having been duly sworn was examined and testified upon his oath as follows:

DIRECT EXAMINATION

page 219 } By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Ernest G. Light, detective.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when you had an occasion to be present at the execution of a search warrant to the residence of Mr. Sam Ervin of 2522 Lee Highway?

A. There was.

Q. Now, at that time what did you take?

A. What did I take personally?

Q. Yes sir.

A. Nothing.

Q. Do you know what was taken?

A. I understand that there were—either two or three letters and a small shell casing were taken.

Q. And do you know of anything else that was taken?

A. I do not.

Q. Did you see anything else besides the letters and the bullet?

A. I did not.

page 220 } Mr. Hassan: No further questions.

CROSS EXAMINATION

By Mr. Morris:

Q. Detective Light, what active participation did you have yourself?

A. I don't understand.

Q. What I mean is, did you search any area?

A. Yes.

Q. What about a corduroy jacket?

A. You said area, and I said yes. I searched in a closet only.

Q. Right.

Ernest G. Light

A. There were boxes there, there was some type of clothing that was hanging in the closet from a nail. I don't know if there was a jacket or not.

Q. Did you go through any of that clothing?

A. If it was hanging there, yes.

I assisted in the search of that closet.

Q. did you take anything from the closet?

A. Did I? No.

Q. Did you see anybody else take anything?

A. No. We had a search warrant. We had a pile of stuff on the floor before us.

page 221 } Q. And all you know of that which was taken from the rest was two or three letters and one small shell casing?

A. Yes.

Q. Who was the parties of that search?

A. Detective Crickenberger, *Sargeant* Kadel, myself, and I believe your partner was there before we left.

Q. He didn't participate in the search did he?

A. No. He didn't help us search but he was there.

Q. Right.

Did you specifically take anything yourself?

A. No sir.

Q. You didn't touch a thing—strike that.

You, yourself, didn't take anything out of the house?

A. No sir.

Q. Have you seen pictures of the accused, not of a police nature, by that I'm specifically eliminating any type of a mug shot.

A. At that residence?

Q. Yes.

A. No sir. I can't honestly *remember* whether I seen pictures of him at that residence or other places.
page 222 } I can't remember for sure.

Q. You didn't search other residences, did you?

A. No sir.

Q. And you don't recall whether you have seen pictures of the accused, a family-type photograph?

A. I can't recall any at the residence at 2522 Lee Highway, no sir.

Q. Did you show pictures of the accused, not mug shots but family-type, of him holding his child with his wife, or by himself?

Ernest G. Light

A. Of a police nature, no.

Q. Were you present at the showing of any other pictures by a detective?

A. Not a police photograph.

Q. Specifically, did you show any pictures to Becky Middleton?

A. Yes sir.

Did I show pictures to *here*?

Q. Yes.

What type of pictures?

A. Of the accused taken after arrest.

Q. A mug shot?

A. I don't know whether you call it a mug shot
page 223 } or not but it was after he was arrested, in
prison clothes.

Q. This is subsequent to the assassination?

A. Yes, sir. These are not of a family nature, these are police photographs.

Q. And you don't know of anyone else who might have shown anyone pictures of him of a police nature?

A. Not to my knowledge.

Mr. Morris: No further questions.

The Court: Detective Light, did you make an affidavit for the search warrant?

The Witness: I did not, sir.

The Court: Who did?

The Witness: I believe it was Detective Crickenberger.

Mr. Morris: If Your Honor please, I have asked Mr. Green to be available, if he could, on a very short notice if the court wishes to clarify this area.

I'm sure we could get that affidavit and search warrant up here.

Mr. Hassan: I've got photostats of them in here.

The Court: If you could stipulate to the photostats, fine.

I would like to have it if possible to rule upon.
page 224 } No matter what you stipulate now, I would like to
have them in the file.

If you could agree on the photostats now, good.

Mr. Morris: I have the search warrant but I don't have—

Mr. Hassan: (interposing) There's photostats of the affidavit, search warrant, and the returns.

Mr. Morris: We will stipulate, Your Honor, based on those.

The Court: All right.

Walter H. Kadel

The photostatic copies will be received by stipulation in lieu of the originals and the combined affidavit, warrant, and return will be received as Defendant's Exhibit 2.

Mr. Morris: Would you make those Commonwealth?

The Court: I marked the Highland County ones as Defendant's.

Mr. Morris: That's because we presented it.

The Court: All right.

We'll mark it as Commonwealth's Exhibit "A".

Mr. Hassan: Commonwealth's what, Your Honor?

The Court: "A"

Mr. Hassan: That would be "B". The drawing page 225 } of Mr. Ervin was "A".

The Court: All right. That's right. This will be Commonwealth's "B".

(Whereupon, Commonwealth's Exhibit "B" was marked and entered into evidence.)

Do you have any further questions of the witness?

REDIRECT EXAMINATION

By Mr. Hassan:

Q. When you say Mr. Morris' partner was present, did you mean Mr. Harrigan was present during this time of the search?

A. Yes sir.

Mr. Hassan: No further questions.

Mr. Morris: No further questions.

The Court: Next witness.

Mr. Morris: We call Detective *Sargeant* Kadel.

Whereupon, WALTER H. KADEL, was called as a witness by the defense, and having been previously duly sworn was examined and testified upon his oath as follows:

DIRECT EXAMINATION

page 226 } By Mr. Morris:

Q. State your name and your occupation.

A. Walter H. Kadel, *Sargeant*, Arlington County Police Department.

Walter H. Kadel

Q. Calling your attention to the 26th day of August 1967, did there come a time when you were in the company of Detective Crickenberger and Detective Light wherein an affidavit for a search warrant was secured?

A. Yes.

Q. And from that affidavit did you secure a warrant?

A. Yes.

Q. And did you serve that warrant?

A. Yes.

Q. And on who did you serve it?

A. Alice Patler.

Q. Anyone else?

A. There was another girl in the house and Mr. Ervin.

Q. And did you then participate in the search?

A. I didn't have time to participate. I was harassed from the time I got there until the time Mr. Harrigan got there on the scene.

Q. You were harassed?

page 227 } A. Yes.

Q. By who?

A. By the young lady sitting there on the front.

Q. But in any event Sergeant Kadel you did participate in the search notwithstanding the harassment?

A. Yes.

Q. From that search what did you specifically find?

A. I didn't find anything.

Q. What was found in your presence?

A. I believe there was three letters.

Q. Three letters?

A. And one shell.

Q. And one shell.

How many photographs?

A. None.

Q. None whatsoever?

A. None.

Q. Have you seen any photographs of the accused of a family nature? And by that I mean not of a police type picture. Do you understand what I'm saying?

A. No.

Q. None at all?

A. I don't believe so.

page 228 } Q. Did there come a time when pictures were shown to a Becky Middleton?

A. Not when I was along, no, I don't believe.

Walter H. Kadel

Q. You don't believe, or no, you don't know?

A. I don't recall.

Q. You don't recall?

A. No.

Q. So to the best of your knowledge and from your observation the only three items taken from the residence of Arlington County at Lee Highway were the three letters and one small shell casing?

A. And one shell casing.

Q. One shell casing?

A. (nodding affirmative.)

Q. That was the only things taken?

A. Yes.

Mr. Morris: No further questions.

The Court: Any questions, Mr. Hassan?

Mr. Hassan: No questions.

The Court: You may stand down, sir.

Anything further Mr. Morris?

Mr. Morris: No, Your Honor.

We have just a slight comment as to their testimony, if Your Honor please.

The Court: Mr. Hassan, you have no further evidence you wish to put on?

Mr. Hassan: No further evidence.

The Court: Go ahead.

Mr. Morris: If Your Honor please, in view of the fact that the search warrant is now a rather moot question we would just like for the record to show that based on the testimony we had this morning between *Sargeant Kadel* and Detective Light we don't know what Detective Crickenberger may or may not have secured but if anything was secured by Detective Crickenberger we move now that not be admitted during the time of the trial.

I believe the commonwealth has agreed as to the error of the search warrant and anything secured as a result of that search warrant will be returned to us.

Mr. Hassan: The only thing I concede is that the shell has no probative right and it was a violation of a personal right to take the letters.

The Court: You're not proceeding on the basis of the ruling of the court as I understand it but on the basis of the commonwealth's confession of error and agreed willingness to return these items?

I will pass on that.

I don't know if Detective Crickenberger seized anything or not. I gather that commonwealth has now agreed that anything seized pursuant to this warrant will be returned.

Mr. Hassan: *Everything* that I know was taken. They're *allegding* that certain other things were taken and I don't know whether they were or not.

The Court: You're not stipulating to that though.

Anything that is to be entered into evidence, I will rule on at that time.

Anything else on this subject would appear to be moot at this time.

Mr. Hassan: I shouldn't think that I will go and offer into evidence anything that I don't know where it came from.

Mr. Morris: I think that's a fair statement and I'm sure he wouldn't either.

Mr. Hassan: Then what are you making such a big federal case out of it for?

page 231 } The Court: That's enough gentlemen. Address your comments to me.

This case will be continued until Monday morning at which time I will give the commonwealth a chance to produce witnesses on the search in Highland County.

* * * * *

page 234 }

PROCEEDINGS

The Court: Are you gentlemen ready?

Mr. Harrigan: Ready, Your Honor.

Mr. Hassan: Ready, Your Honor.

The Court: Gentlemen, this matter comes on the continued motion of the defense to suppress certain evidence seized by the prosecution in Highland County. It was continued to give the Commonwealth an opportunity to present testimony on the point this morning.

Is the Commonwealth ready to do that?

Mr. Hassan: Yes, Your Honor.

Mr. Morris: If Your Honor, please. I don't know how many witnesses the prosecution is going to call. If the Court would have the witnesses recognized and then we may—

Mr. Hassan: If Mr. Morris had not interrupted me I was about to call the witnesses to have them sworn.

The Court: Will all the witnesses come forward and be sworn.

Dorsey Kelly

(Whereupon, witnesses were sworn.)

The Court: Any other witnesses to testify on either side of this motion to suppress *evicence* involving Highland County, please come forward.

page 235 } Mr. Morris: Robert Lloyd may or may be be a witness.

Mr. Hassan: Do you mean in this motion?

Mr. Morris: Yes.

The Court: All right.

Let him be sworn.

(Whereupon, the witness was sworn.)

Will all remain outside the courtroom until your testimony is called for.

Mr. Hassan: Trooper Kelly will be the first witness.

Whereupon, DORSEY KELLY, was called as a witness and having been previously duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir, and your occupation.

A. Dorsey Kelly, trooper, Virginia State Police.

Q. Now, directing your attention to on or about the 16th day of September, 1967, did there come a time when you had an occasion to go to the farm of Sam Ervin in MacDowell, Virginia?

page 236 } A. Yes sir.

Q. Now, would you describe the premises, please?

A. It's a farm about eight or nine miles south of MacDowell, on the west side of state route 678.

There's a dwelling house that is—well, it's on the west side of 678 and there is a woodshed and I believe some kind of a hay shed or feeding barn back a ways from—in back of the house.

There's a small building that they call the Ervin Trading Post. It's just south on 678 off the—well, adjacent—well, right by the farm.

Dorsey Kelly

Q. And, now, did you have an occasion to take some pictures while you were at this farm?

A. Yes sir.

Q. And I would like to show you some pictures and ask you whether or not these are pictures that you took?

Mr. Morris: Your Honor, we object to showing pictures now unless the trooper needs them to refresh his recollection.

He's trying to pull the witness up by his own bootstraps.

The Witness: Well, I—

Mr. Morris: I would ask the witness not to
page 237 } answer while we are making an objection.

The Court: What is the basis of the objection to the pictures?

Do you not think they would aid the Court in determining the physical layout of the farm?

Mr. Morris: I think the witness should be able to testify as to what he saw.

The Court: Well, the witness may testify as to what he saw but the pictures would convey the physical layout to me better. The test is whether or not the pictures are accurate.

The objection is overruled.

Mr. Morris: Note our exception, for the reason stated.

By Mr. Hassan:

Q. First of all will you look at those and tell me if those are pictures you took on the Sam Ervin farm on the 16th day of September, 1967?

A. Would you like for me to tell you—

Q. (interposing) No. Right now answer that one question; yes or no. Are those the pictures?

A. Yes they are.

Q. All of the pictures?

page 238 } A. Yes they are.

Mr. Hassan: I would like to have these marked for identification as Commonwealth's 3-A, B, C, D, and E.

The Court: Mr. Hassan, on this point I've got Commonwealth's A and B, so this would be C?

Mr. Hassan: C-1, 2, 3, 4, and 5.

(Whereupon, Commonwealth's Exhibits C-1 through 5 were marked for identification.)

Dorsey Kelly

By Mr. Hassan:

Q. Now, trooper, I show you picture "C-1" and ask you what that is a picture of?

Mr. Morris: Your Honor, we are going to object. We looked at the pictures and they don't reflect the true picture of the actual location.

These are pictures taken from certain vantage points that would not considerably help the court in any circumstance. It's a posed-type picture.

It's an obvious case where they haven't taken a picture of a certain point so if they haven't shown any pictures to show the relationship of the house to the tree—they've taken the pictures away from the house, pictures that have not given the Court an idea as to where the tree may be in relation to the house.

page 239 } The Court: I haven't seen the pictures yet.

I *think* it would be necessary to establish these pictures are correct portrayals of what the trooper saw. If they are, I would use them as a part of the evidence, but if they don't show the whole picture of course that's a fit subject of cross examination.

Mr. Hassan: On this point of posed pictures, there is no such law in regards to having in the photograph identifiable individuals or identifiable objects.

Obviously, when Sam Ervin's sign is shown, it's posed, but it's for identification. When a particular officer is in a picture it's not a posing of a scene or a reenactment; it's for identification of the particular location and even when a photograph is taken of an automobile the license plate is posed, if you want to say so, but it's for the purpose of identification and for such purposes individuals and objects do not make a picture inadmissible.

Now, with regard to whether or not these pictures show what they portend to show we must first hear from the officer. And before any such objection can be made they must be offered in evidence.

I'm going to ask the Court to allow me to go through the identification process and ask the defense to re-
page 240 } frain from objection until the proper time which is when they're offered in evidence.

The Court: You may go ahead.

Dorsey Kelly

By Mr. Hassan:

Q. What is that a picture of, trooper Kelly?

A. This is a photo of the meadow which is west of the Sam Ervin farm.

Q. Where were you standing when you took that picture?

A. I was standing near a fence, just the other side of a fence looking west, well, a little southwest toward the meadow and the bridge where the trees were across the—well, there's two gullies or creek beds there.

Q. Now, who was with you when that picture was taken?

A. Investigator Bradley of the Virginia State Police; Detective Crickenberger; and, Detective Egle, were in the area.

Mr. Hassan: I offer this as Commonwealth's Exhibit C-1.

The Court: Is there objection.

Mr. Harrigan: Yes, your Honor.

The Court: What is the nature of the objection?

Mr. Harrigan: We would like the opportunity
page 241 } to cross examine.

The Court: Mr. Morris, you began the objection so you carry it through.

Mr. Morris: We desire to cross examine the trooper as to whether or not this is in fact the picture the trooper claims it to be. Secondly, the picture is now on the Bench and we renew our objection that it's a posed picture and does not truly reflect the area—

The Court: (interposing) I will give you an opportunity to cross examine now, if you will, on this picture.

Mr. Morris: We would not at this time for the purpose of speeding it up, but we don't relinquish our right to cross examine.

Possibly, we could cross examine on all the pictures at one time if Mr. Hassan pursues this line of evidence.

The Court: I will receive the picture and give you an opportunity to cross examine and move to strike it from the evidence.

(Whereupon, Commonwealth's Exhibit C-1 was admitted into evidence.)

By Mr. Hassan:

page 242 } Q. Now, I show you C-2 and ask you what that
is a picture of and where you were standing when
you took it?

Dorsey Kelly

A. This is a picture of Sam Ervin's meadow but I am facing east; I am standing west and facing east and it shows a picture of the dwelling house and fence and woodshed of the Sam Ervin farm.

Q. And between where you're standing and the house, what is that rock formation?

A. That's the creek bed.

Mr. Hassan: I offer this one, Your Honor.

Mr. Morris: Same objection, Your Honor.

The Witness: This is—

Mr. Hassan: (interposing) I offer this one in evidence.

The Witness: This is the same—

Mr. Hassan: (interposing) Wait just a moment, now.

The Court: This will be received as C-2.

(Whereupon, Commonwealth's Exhibit C-2 was admitted into evidence.)

The Court: Go ahead, sir.

By Mr. Hassan:

Q. Now, I offer you picture C-3. Tell the Court page 243 } what that is a picture of.

A. This is a creek bed and the meadow, but in more detail of the fence and my automobile and woodshed.

Q. Where were you standing when you took that one?

A. I was facing east, looking east, standing in the meadow at the back of the house.

Mr. Hassan: I would like to offer C-3, Your Honor.

The Court: Any objection.

Mr. Morris: Same objection as to one and two, Your Honor.

The Court: All right.

I'll receive this as C-3.

(Whereupon, Commonwealth's Exhibit C-3 was admitted into evidence.)

By Mr. Hassan:

Q. I would like to offer you that picture, sir, and ask you to tell the Court what that is a picture of?

Dorsey Kelly

A. This is a picture in the meadow back of Mr. Sam Ervin's dwelling. It shows the ridge of the creek bed and shows several trees and Detective Crickenberger and I believe Mr. Bradley are at the tree where they were in the process of—

Q. I'll ask you about that later.

page 244-245 } A. Yes sir.

Mr. Hassan: I offer this one.

The Court: Officer, that picture which counsel are now examining, which direction were you facing?

The Witness: I was looking south.

Mr. Hassan: I offer that one.

The Court: Same objection?

Mr. Morris: Yes, Your Honor, please.

The Court: Received as C-4.

(Whereupon, Commonwealth's Exhibit C-4 was admitted into evidence.)

By Mr. Hassan:

Q. This one?

A. This is almost the same picture as the previous one that shows the ridge of the creek bed and several trees, and yet it's looking south in the same meadow behind the same dwelling.

Mr. Hassan: I would like to offer this one, Your Honor.

The Court: Same objection?

Mr. Morris: Yes, Your Honor.

The Court: Received as C-5.

(Whereupon, Commonwealth's Exhibit C-5 was page 246 } admitted into evidence.)

By Mr. Hassan:

Q. Now, Trooper Kelly, what were you and Investigator Bradley and Detective Crickenberger and Detective Egle doing at the Sam Ervin farm?

A. We were searching the area in back of the dwelling, searching for cartridges that—I believe they said for a 7.75 weapon or gun—searching for empty cartridges from that type weapon.

Q. Were you searching for anything else?

A. And slugs.

Dorsey Kelly

Q. And slugs?

A. Yes sir.

Q. Now, did you make this series of pictures?

A. I did.

This series of photos were made while the other gentlemen were in the process of searching and digging slugs out of the trees, or tree.

Mr. Hassan: I offer these for identification, Your Honor. I would like to have these marked for identification, D-1, 2, 3, etc.

Mr. Harrigan: D-, what?

Mr. Hassan: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, page 247 } 13, 14.

The Court: Trooper, what was the date these pictures were taken?

The Witness: September 16, 1967.

The Court: Does that apply to both sets of pictures?

The Witness: Yes, sir.

By Mr. Hassan:

Q. I would like to show you D-1 and ask you sir what that is?

A. That's a picture of a tree showing where three places had been chopped in where bullets had been dug out of the tree. That's in the meadow in back of the Sam Ervin residence, back of the house.

Mr. Morris: Speak up, please. I can't hear you.

Mr. Hassan: In the meadow in back of Sam Ervin's house. I would like to offer this one, Your Honor.

The Court: Objection, gentlemen?

Mr. Morris: Same objection as to C-1 through 4.

The Court: Gentlemen, to save time; Mr. Morris, I can receive all these subject to your right to cross examination.

I will receive them all conditionally.

page 248 } Let the record show that your objection is continuing.

Mr. Morris: All right, sir.

The Court: It will be received as D-1.

(Whereupon, Commonwealth's Exhibit D-1 was admitted into evidence, subject to continuing objection.)

Dorsey Kelly

Mr. Hassan: Do you want me to offer these all to the Court at once?

The Court: If counsel has had time to look at them.

Mr. Hassan: They looked at them on Friday and again this morning.

Mr. Morris: We would like to look at them now.

By Mr. Hassan:

Q. What is that a picture of?

A. This is a picture of the same tree and it has Detective Crickenberger in the process of digging out the second slug in the tree.

Mr. Hassan: I would like to offer this one, Your Honor, which is D-2.

(Whereupon, Commonwealth's Exhibit D-2 was admitted into evidence, subject to continuing objection.)

page 249 } By Mr. Hassan:

Q. Tell us what D-3 is?

A. This is a picture of the same tree that shows four places had been cut in the tree where slugs were removed.

Q. And what is D-4? (handing D-3 to the Court)

(Whereupon, Commonwealth's Exhibit D-3 was admitted into evidence, subject to continuing objection.)

A. In D-4 I'm looking south toward the hill or ridge where the trees are and it has Detective Crickenberger and Investigator Bradley and Detective Egle in it.

Detective Crickenberger is by the tree and in the process of chopping, and it has a creek bed in front of the tree and you can see the trees in the back and the fence in the background.

Q. And D-5? (Handing D-4 to the Court)

(Whereupon, Commonwealth's Exhibit D-4 was admitted into evidence subject to continuing objection.)

A. A picture of the same wooded area.

I'm looking west and south, southwest, across—it shows the creek bed, the rocks in the creek bed and where the tree has been chopped and numerous trees.

Dorsey Kelly

Mr. Hassan: I offer D-5, Your Honor.

page 250 { (Whereupon, Commonwealth's Exhibit D-5 was
admitted into evidence subject to continuing ob-
jection.)

By Mr. Hassan:

Q. And that, D-6, Trooper Kelly, what does that show?

A. I'm looking west up the meadow but in the area where
they was looking for the cartridges.

It shows Detective Crickenberger and Egle and Investiga-
tor Bradley and it shows the hollow, woods on both sides,
north and south, and the meadow going back west, and a
fence.

Q. And where were you standing when you took that?

A. I was standing east of the fence. That would be in the,
in the yard back of Mr. Ervin's house.

Mr. Hassan: I offer number 6.

(Whereupon, Commonwealth's Exhibit D-6 was admitted
into evidence subject to continuing objection.)

By Mr. Hassan:

Q. And what does number 7 show, Trooper Kelly?

A. I'm standing in state route 678 and that is a picture of
the Sam Ervin residence and his driveway, a fence around
his driveway, and his name on a sign along the
page 251 { driveway, Sam Ervin.

I'm looking west.

Mr. Hassan: I offer number 7.

(Whereupon, Commonwealth's Exhibit D-7 was admitted
into evidence subject to continuing objection.)

By Mr. Hassan:

Q. Number 8?

A. I'm standing in the meadow looking east. I'm in the
meadow in back of Mr. Ervin's house which shows the house
and fences and woodshed and, well, it shows the edge of, well,
the creek that ran right in front of those trees in these pic-
tures and it shows the dry gulley in the meadow.

Dorsey Kelly

Mrs. Lane: I didn't understand. You said the dry gulley?

The Witness: Yes, ma'am.

Mr. Hassan: I offer that, Your Honor. I offer D-7. They're now examining D-8.

The Court: Trooper, I show you D-7, again.

The Witness: Yes sir?

The Court: Where is the meadow and the tree with respect to that picture? Is that it which shows the front?

The Witness: Yes. It would be directly back of page 252 } this (indicating). I'm looking west. The house blocks out the picture of the trees in back of the house.

The Court: All right, sir.

The Witness: I was just looking west and slightly south.

The Court: Now, does the fence which is shown in D-7 in front of the house, does that extend all the way around the property, around the house?

The Witness: There are two fences; one around the driveway and another fence in the back of the house.

The Court: Which is shown—?

The Witness: In D-6.

The Court: In D-6?

The Witness: Yes sir.

The Court: So that's not a continuous fence going around the house? The one in the front and the one in the back are not continuous?

The Witness: I don't know whether they join or not. There's fences on both sides of the road, I guess.

Mr. Morris: Your Honor, we would ask the trooper to testify to what he knows and not what he guesses.

The Court: All right, sir. Thank you.

Go ahead, Mr. Hassan.

page 253 } (Whereupon, Commonwealth's Exhibit D-8 was entered into evidence *subjec* to continuing objection.)

By Mr. Hassan:

Q. I believe you have D-9 before you.

A. This is a picture of a tree that was chopped out, where one of the slugs was recovered. I'm not sure if that's a slug still in there or not. It's a picture where the slug was removed anyway.

Q. And what is D-10? (Handing D-9 to the Court)

Dorsey Kelly

(Whereupon, Commonwealth's Exhibit D-9 was admitted into evidence subject to continuing objection.)

A. This is a picture of the same tree which shows two places had been chopped, and a picture of someone's hand. I think the left finger is pointing to where the bullet was recovered from.

Q. That is not your hand?

A. No, sir.

Q. Do you know whose hand it is?

A. I do not. I'm not sure.

Mr. Hassan: I offer D-10.

Mr. Morris: We would again ask the Court to
page 254 } instruct the witness to testify as to what he
 knows, not what he thinks.

The Court: He didn't say he thought anything. I think he said he's not sure.

Mr. Morris: He said he thinks the left finger is pointing—

The Court: (interposing) I thought you were speaking of identification of the hand.

Mr. Morris: We would ask that he testify as to what he knows and not what he might think.

By Mr. Hassan:

Q. There's no guess about the fact that you took the picture and the hand was there?

Mr. Morris: I object to the leading of the witness.

The Court: Objection sustained.

By Mr. Hassan:

Q. I show you D-14 and ask you what that is?

A. It's a picture of the same tree which shows where the tree has been chopped in three different places and has someone's hand on a hatchet in the process of chopping.

The Court: Mr. Hassan, did you mean to tender 14?

Mr. Hassan: Beg your pardon?

page 255 } Mr. Hassan: Oh, I stopped all pictures and
 will have the one who pointed a finger come in
here and testify.

The Court: All right.

By Mr. Hassan:

Dorsey Kelly

Q. Now, trooper, are there two creek beds on that farm?

Mr. Morris: That's a leading question, Your Honor.

The Court: Objection sustained.

Mr. Morris: He can ask how many creek beds, if he knows.

Mr. Hassan: I don't think it is leading, your Honor.

He testified there were two types of creek bed.

The Court: The objection is sustained.

Mr. Morris: I don't think he should argue with the Court.

The Court: The objection was sustained.

By Mr. Hassan:

Q. Would you describe the creek that was between you and the tree when you took the picture from the fence of the Sam Ervin farm?

page 256 } A. There is a creek that runs, oh, maybe six or eight feet north of the trees, of the tree the bullet was dug out of.

There's a second dry gully maybe a hundred or a hundred and fifty feet—I don't know. I'm not sure how far, further north. But they don't run precisely parallel but in fact they both have curves or turns in them, not just straight furrows.

The Court: Excuse me, Mr. Hassan.

How far north of the tree did you say the dry gully is approximately, trooper?

The Witness: I would guess about a hundred, hundred and fifty feet.

The Court: All right.

The Witness: From the gully that has water in it.

By Mr. Hassan:

Q. Now, are the house and its buildings on the same side of the creek as the tree or are they on the opposite side?

A. They're on the opposite side.

Q. And that's both the dry gully and the creek?

A. Yes, sir.

page 257 } The house is across from both of them. The tree's on the southside of the stream or the gully that has water and then there's a dry gully and then further on back there's a fence and further on back there's a house.

Mr. Hassan: Thank you.

Dorsey Kelly

I have no further questions of this witness.

The Court: Mr. Morris?

CROSS EXAMINATION

By Mr. Morris:

Q. Trooper, would you care to tell the Court about the additional fence in the rear; the fence that's further beyond the tree away from the house?

A. That's—oh, you mean looking out; the line fence or something in the edge of the woods?

Q. That's right.

A. Well, that's just some signs in the pictures. I don't know if that's a boundary line or pasture fence or something. It's on further south than the tree.

Q. That's right?

A. Yes sir.

Q. Now, that tree where you people cut and destroyed it—

Mr. Hassan: I object to that.

There's no evidence the tree was destroyed.

page 258 } By Mr. Morris:

Q. Did you destroy it?

A. The tree was chopped into several times.

Q. The tree that you chopped into several times, was that in the clearing?

A. It was right on the edge of the clearing.

Q. Was it cleared beyond it?

A. It was a wooded area south of that.

Q. What?

A. There's a wooded area, a grove of trees south of that.

Q. Was any area cleared from that area? In other words, was any area cleared beyond that tree?

A. There's a ridge. The tree is at the foot of a hill looking south there.

Q. Now answer my question.

Is there any area there that has been cleared away beyond that tree?

A. You mean immediately beyond that tree?

Q. Yes.

A. No. Just, well, several trees on a ridge. It's kind of a little mound of dirt there; not a big trenching thing, just a meadow-like.

Dorsey Kelly

page 259 } Q. How did you get on that property trooper Kelly?

A. Sir?

Q. How did you get on that property?

A. I drove on to the property and then walked down into the meadow.

Q. You did this based on a search warrant?

A. Yes sir.

Q. Did you go on the property before you got the search warrant?

A. Yes sir.

Q. Trooper Kelly, when you first went on, what time was that? When you first went on the property, what time was it?

A. Oh, it was in the middle of the afternoon.

Q. It was prior to your securing a warrant?

A. Yes, sir.

Q. Did you do some searching at that time?

A. No sir.

Q. Did you do some looking around?

A. I went to the—I drove on the property, I got out and went to the door and knocked on the back door and there was no answer so I walked around and got on the front door and I then came back and the Investigator, Bradley, and other detectives, they were around my car there and I don't know who said, "Well, since Mr. Ervin's not home, we had best go get a search warrant or go see the Commonwealth attorney and get some advice" and so went to Monetrey and I first went to see my Commonwealth attorney, Mr. R. Turner Jones, and he had went home and then I went to see the County judge and he issued the search warrant.

Q. Did you inform the County judge the purpose for issuing the search warrant?

A. I introduced Detective Crickenberger and Investigator Bradley, the two of them, and I don't know whether—I believe Investigator Bradley got the search warrant.

Q. But you were part of the general conversation, weren't you?

A. I was in the room, yes sir.

Q. You got the search warrant based on what you had observed on the property the first time?

A. No, sir.

Dorsey Kelly

The Court: Mr. Morris, I don't want to cut you off but it was my view Friday that the warrant was insufficient in view of the *Wade* versus *U. S.* case, and that page 261 } being so, you should not take up time now regarding the sufficiency of the warrant because the only question now is whether or not the warrant was essential to the acquisition of the evidence which is now sought to be suppressed or whether or not that evidence should be used irrespective of the warrant.

Mr. Morris: The purpose of getting into the warrant was to show the trooper was there prior to securing the warrant and indicates in the warrant the property they were looking for was within the curtilage.

Certainly I can impeach him on that, if that be the case.

The Court: All right, sir. Go ahead.

By Mr. Morris:

Q. Trooper Kelly, do you recognize that search warrant?

A. Yes, sir.

Looks like a copy of the warrant that was secured prior to the searching of the property for the slugs and cartridges.

Q. And that search warrant was secured after you had been to the property the first time?

A. Yes, sir.

Q. Based on information you had at that point you went to the County judge to get the search warrant?
page 262 } A. No, sir. Not on that information only.

We had information from a Tom Miller who works for Mr. Ervin or something. He had told us that one of the detectives showed Mr. Miller a picture of Mr. Patler.

Q. That's not the question I asked you.

Mr. Hassan: It sure is the question you asked.

Mr. Morris: It's not responsive. And I object to the prosecution—

The Court: (interposing) The objection is overruled.

Mr. Morris: Yes, Your Honor.

By Mr. Morris:

Q. This was based also on your observations there?

Mr. Hassan: I'm going to insist that he complete his answer.

The Court: Have you completed your answer?

Dorsey Kelly

The Witness: No, sir.

The Court: Go ahead.

Mr. Hassan: He had told them what Mr. Miller said. Go ahead.

The Witness: The detective showed Mr. Miller a picture of Mr. Patler and said, "Do you know this man?" And he said,

"Yes. That's John Patler." He said, "That's Sam page 263 } Ervin's son-in-law." And he said further—

Mr. Morris: (interposing) For the record we are objecting to the hearsay. We aren't inviting hearsay in our questions. It's inadmissible. We're asking for his observations.

Mr. Hassan: The question was on the information upon which he obtained the search warrant.

The Court: The information on which he obtained the search warrant might properly be hearsay and for that purpose I think it's proper and will let him answer.

Mr. Morris: Note our exception to the witness testifying to hearsay.

The Court: Go ahead.

The Witness: Mr. Miller stated further he had noticed Mr. Patler showing the twins of Mr. Ervin how to shoot a pistol of some kind back of the meadow of Mr. Ervin's property. They were doing some target practice. That's when he was on the property seeing about the chores. He works for Mr. Ervin.

That's what gave us cause to believe that we could find slugs and cartridges from this gun in the meadow back of the house.

Mr. Morris: Are you through?

page 264 } The Witness: Yes. That's the information.

By Mr. Morris:

Q. That's the only information?

A. Well, that's the only information I heard.

I know that they had a gun or a picture of some type of gun that they also showed around.

Q. The original time you went on the property until the search warrant was one continual search was it not, trooper Kelly?

A. Sir?

Q. From the first time you went on the property, the very first time—

A. (interposing) No, no.

Dorsey Kelly

Q. Let me finish.

The first time you went on the property for observation or whatever it was and the subsequent search warrant was as a result of going on the property originally?

A. No sir.

I wanted to see if Mr. Ervin was home so I stopped there and knocked on the door. I thought maybe Mr. Ervin could tell us exactly where this place was that Miller had referred to where this target practice was.

Q. I'm not interested in what he might have page 265 } told you.

Mr. Hassan: I'm going to object to this battle between the witness and Mr.—

Mr. Morris: The answer was not responsive to—

The Witness: (interposing) then we went, got in the car and went to Monterey.

Mr. Hassan: (continuing) Morris. I don't think the stenographer is going to be able to get the comments of Commonwealth, counsel, and the witness at the same time and if there's going to be any comments I want the Court of Appeals to see what was said, by whom, when, and how.

The Court: Trooper, if counsel makes an objection, stop and let him make his objection.

At this point, I consider the answer he has given as responsive to the question.

He was asked whether or not it was a continuous search or not and he proceeded to give a chronological account of what he did and I think it's proper and I'll let him continue.

Go ahead.

The Witness: Well, after I had knocked on the door and obviously Mr. Ervin was not home I walked around back to my car and they, were, I believe all three of them, were out of the car just right in the area, and maybe it was page 266 } Bradley who said, "We best go and get a warrant if we're going to do any searching for slugs or cartridges." So we got in the car and drove to Monterey and tried to see Mr. Jones and then the County judge and he issued the search warrant.

Detective Crickenberger and Investigator Bradley, I believe, did most of the talking, giving the information.

Dorsey Kelly

By Mr. Morris:

Q. Then, Trooper Kelly, you would not have searched if you did not secure the warrant, is that true?

A. That's absolutely right.

Mr. Morris: Thank you, trooper. Thank you.

The Witness: I would not have—

Mr. Morris: (interposing) I'm not asking any question now.

Okay.

Mr. Hassan: I object to his arguing with the witness.

The Court: Objection overruled.

Mr. Morris: Further, I would request the Court to instruct the witness to be responsive to the question only.

The Court: He was duly stopped. It was unnecessary. page 267 }

Mr. Hassan: I would like to have the record show—

The Court: (interposing) Gentlemen. It is not necessary to have these exchanges. The trooper is doing the best he can and there is no objection pending.

Mr. Hassan: (continuing)—he's baiting him.

By Mr. Morris:

Q. Now, trooper, I show you Commonwealth's Exhibit D-6.

Would you tell the Court one more time exactly where you were standing when this picture was taken?

A. I was looking west.

Q. Where were you standing trooper?

A. I would have been in the, in Mr. Ervin's back yard to get the picture of the fence between me and the investigating detectives.

Q. You're sure of that?

A. I don't know of any other way I could have gotten the fence between us if I hadn't been on the other side of it. That's looking west.

The Court: While you have that before you, trooper let me ask you: What is the approximate distance of the dry gully that shows in that picture from the fence which page 268 } also shows in the picture?

The Witness: Well, it varies; it gets further away.

Dorsey Kelly

The Court: Well, from where you're standing and sighting towards where the men are in the picture so you have a straight line there.

The Witness: Straight to them?

The Court: Yes.

About how far away would that dry gully have been from that fence which is in the foreground?

The Witness: I imagine about a hundred feet.

The Court: All right.

By Mr. Morris:

Q. Now, I show you Commonwealth's D-4.

Can you identify this area up here?

A. Well, that's the ridge that's south, just a wooded area and ridge.

Q. More specifically, what is this here?

A. I'm not sure. I believe it's a fence.

Q. You believe it's a fence?

A. I believe it is. It looks like a fence post to me.

Q. Do you recall seeing the fence there?

page 269 } A. No. It kind of sticks in my mind that it's an old fence but I'm not sure about that. It looks like fence posts there.

Q. Now, I show you Commonwealth's Exhibit D-2 where it shows Detective Crickenberger chopping on a tree.

A. Yes sir?

Q. Will you tell the Court whether or not beyond the tree, behind the tree is completely clear?

A. Well, for several—right around that tree there's some cleared area. It's more detailed in this picture. There's no other trees exactly right by there.

Q. Is the area beyond the clearing all cleared out?

A. In this photo it's cleared, a little cleared area.

Q. Commonwealth's Exhibit D—4; is it more clear than Exhibit D—2?

A. No. In this picture I can see more trees.

Q. From this tree on, is it more clear. This is an area completely cleared of trees?

A. A small area; no trees just right by the tree that was right back south of it or—of that tree.

Q. Approximately where were you, were you standing?

A. I was looking south.

Q. Looking south?

page 270 } A. Yes sir.

Dorsey Kelly

Q. Looking toward the fence posts and the end of the line; is that correct?

A. Well—

Q. Is that correct?

A. I don't understand the question.

Q. Were you looking toward the end of the line?

A. What end of the line are you talking about?

Q. The end where these fence posts are up here.

A. This fence is on the border itself.

You're not thinking this is the same fence that is running across this way, are you?

Q. I'm asking you a question.

A. There's a fence that seems south of this around the meadow.

Q. That's right.

Trooper, Commonwealth's Exhibit D-8.

Is that your car in that picture?

A. Yes sir, it is.

Q. That's parked in the driveway of the farm?

A. Yes, sir. Well, back yard. The driveway is just behind my car there.

Q. Trooper Kelly, can you tell the court of page 271 } any reason why you didn't take a picture of the barn?

A. What barn are you talking about?

Q. You didn't see the barn?

A. You mean the old shed up on the side of the hill?

Q. The barn that would be about a hundred and fifty yards away from the tree, and further away from the tree and the house.

A. Is there any reason why I didn't take a picture of the barn?

Q. Yes.

A. Well, I didn't have any particular reason to.

I took pictures of the driveway and the dwelling and the meadow in back of the dwelling where we looked for those cartridges and slugs.

Q. Now, Trooper Kelly, would it be correct to state that the barn was at least twice further away from the house than the tree is?

A. I don't know.

Q. Beg your pardon?

A. I don't know.

Q. You don't know that?

Dorsey Kelly

A. No, I don't know. It might be.

Q. Would it be fair to say the barn is further
page 272 } away from the house than the tree is?

A. The barn was back up on the ridge to the north and the tree was on the side of the meadow south.

We weren't looking for anything up around the old barn; just in the meadow around those trees by the house.

Q. Fine.

Now, answer the question. Is the barn further away from the house than the tree? Yes or no, and then explain it.

A. The barn is further away from the house than the tree?

Q. Yes.

A. Yes, I think it is.

Q. Thank you.

Mr. Hassan: First of all, trooper—

The Court: Wait a minute.

Are you through, Mr. Morris?

Mr. Morris: No, I'm not through.

By Mr. Morris:

Q. Trooper Kelly, my last question to you would be:

You therefore entered upon the land and took all these pictures under the authority you thought was a good search warrant; is that correct?

page 273 } A. Yes sir.

Mr. Morris: No further questions.

The Court: Mr. Hassan?

REDIRECT EXAMINATION

By Mr. Hassan:

Q. This so-called barn. Would you describe that to us?

A. Well, there's an old feeding barn or something back in the meadow aways. I didn't pay any attention about the thing or make any mental notes about it and the distance because we weren't particularly concerned because that was within a different direction, I think.

Q. What did it look like?

A. Well, just an old, old shed. I don't know whether it had a side off of it or not. It was not a real good building.

Q. Would it be a lean-to, a shelter?

Dorsey Kelly

A. The type of thing you would feed cows in, in the winter, I believe.

Q. Now, is that on the same side of the road and the creek as the tree or on the opposite side?

A. It's on the opposite side of the creek.

Q. And the road?

A. Yes, I believe so, because it was up on the page 274 } hill.

Q. And on the opposite side of the dry gully, from the house?

Mr. Morris: Objection, Your Honor.

This is redirect and he has a right to question about the barn but now he's gone way beyond that.

The Court: The objection is overruled.

Mr. Morris: Note our exception.

The Witness: The barn would be across the road to the north.

By Mr. Hassan:

Q. And the dry gully would separate the barn from the house?

A. Yes, sir.

Q. And the wet gully would separate the barn from the tree?

Mr. Morris: That's objectionable, Your Honor. It's very leading on redirect examination.

Mr. Hassan: Very accurate though, Your Honor.

Mr. Morris: I would object to that also.

The Court: Objection is sustained.

Mr. Morris: And I would ask the Court to instruct the Court Reporter to strike that comment from the page 275 } record.

The Court: If there was any jury present I would but there's no affect on me.

I would ask counsel to direct comments to the Court and not between themselves.

Mr. Hassan: I haven't directed one remark toward him this morning and I don't think—everything I said this morning has been to you; the objection has been to you.

The Court: As to the witness' last question directed to him I think that was leading, but I have some questions of my

Dorsey Kelly

own on the location of the barn so it's probably rendered harmless by what I'm going to ask him.

Trooper, I want you to look at an exhibit in the file, which is a rough sketch made of the property the other day, marked Commonwealth's Exhibit "A" and it purports to show the entrance road and the house and a fence around the house right about where you have your left finger would be the entrance drive.

The Witness: Well, the—

The Court: (continuing) Can you point out; is that the way the property looked to you?

Now, that's not to scale.

The Witness: Somewhat, yes sir.

This would be route 678, and this would be the page 276 } Ervin Trading Post, and this would be the entrance to the dwelling. But there's more curve to it than that. The thing comes around and there's an old road running on out through here and then there's the dry gully and then there's a creek on over here and then the woods up here.

The Court: All right.

Now, where, with respect to all of that, is the tree that was chopped?

The Witness: Well, the tree would be on the edge of the grove here just in front of this creek.

The Court: Where, in respect to all of that, would be the barn?

The Witness: The old barn was back up here on the ridge, as well as I can remember. It's just an old feeding barn back here.

See, this is kind of down in the hollow; there's a ridge here, and a ridge here.

The Court: And your recollection is that the barn would be to the righthand side of the property facing the creek from where you were facing?

The Witness: Over this way, yes sir.

The Court: Now, Mr. Morris showed you on some photographs a fence that was behind a tree.

page 277 } The Witness: Kind of on the ridge, yes sir.

That would be back up in here on the ridge. I I don't know if that's a good fence or just the remnants of an old fence. I don't know for sure. I didn't pay any attention to it that day.

C. L. Bradley

The Court: Now, the fence with the white-washed posts in the foreground of your picture.

The Witness: That's here.

The Court: Around the house and around the drive, is that right?

The Witness: Yes. Coming in here, the right post.

The Court: All right.

I think I'm oriented.

Do you gentlemen have questions on that diagram?

Mr. Morris: Yes.

By Mr. Morris:

Q. Do you have recollection of where there might be a well in relation to that diagram?

A. I just don't know where any well is there right off-hand. I don't know. There might be one there but I don't recall anything about a well.

Mr. Morris: Thank you, trooper.

page 278 } The Court: Any further questions of this witness?

Mr. Hassan: No further questions of this witness.

The Court: May he be excused? Will he be needed later in the case?

Mr. Hassan: He probably will be needed in four or five days.

The Court: All right, trooper.

Do you have any further testimony on this point?

Mr. Hassan: I have three more witnesses.

Investigator Bradley, please.

Mr. Morris: Commonwealth indicated he would be testifying at a later date.

Whereupon, C. L. BRADLEY, was called as a witness and having been previously duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir, and your occupation?

A. C. L. Bradley, investigator, Virginia State Police.

Q. Directing your attention to the 16th day of September, 1967, did there come a time when you had an

C. L. Bradley

page 279 } occasion to visit the farm of Sam Ervin in Mac-
Dowell, Virginia?

A. Yes sir.

Q. And what did you do when you went to that farm?

A. On which trip?

Q. The second trip.

A. We—well, I went to the door and attached the search warrant to the door; went over into the field, the pasture—and there were four of us there, and we made a search of the field and we also, we found a tree which had some holes in it.

We went into this tree with a hatchet and extracted four spent slugs and we found three empty cartridges cases in the field.

Q. And where was this tree located with reference to the Sam Ervin house?

A. Sam Ervin's house would be located—considering 678, say that would be running south, it would be on the west side of 678 and the tree would be located somewhere between two hundred to two hundred and fifty feet to the left of the house slightly to an angle.

Q. And between the house and the tree what was the nature of the terrain?

A. Pasture land.

page 280 } Q. Well, was there a road?

A. Yes sir.

Q. Where was that located between the house and the tree?

A. Well, to start off, a road comes off of route 678 and comes on to the side of Mr. Ervin's house and then this road then continues on through the pasture field, I would say approximately in the middle of the field going back somewhere.

Q. Now, with relationship to this road, how far was it from the tree at a point nearest a straight line to the Sam Ervin house?

A. Could you repeat that?

Q. From the road to the tree at a point which would be approximately a straight line from the Sam Ervin house, how far is the road from the tree?

A. The road that goes back through the field?

Q. Yes.

A. I would say around a hundred and twenty-five feet or something like that. That would be close, I would guess.

Q. And how far at that point is the road from the house?

A. Are you talking about the road being here (indicating) and the road going straight up and how far is

C. L. Bradley

page 281 } that road straight over from the tree to the house?

Q. To the road.

The tree is one hand and the house is the other. Which is which doesn't matter.

I want to know how far it is from the tree to the road and from the same point from the road to the house?

A. I would say two hundred feet.

Q. From the house to the road or from the tree to the road?

A. The road at one point goes right beside the house.

Q. All right.

A. And then continues back through the field and the tree sets off, I would say, a hundred to a hundred and twenty-five feet from the house.

Q. And the tree is how far from the house?

A. A little over two hundred feet, give or take a couple.

Q. How far is the house from the tree?

The Court: You can the question by subtraction. If you say the road is a hundred feet from the—

Mr. Hassan: (interposing) No. That's what I thought he said, but I didn't get it that way.

Let's go back.

page 282 } By Mr. Hassan:

Q. From the house to the tree; how far?

A. Two hundred to two hundred and fifty feet.

Q. All right.

From the tree to the road to the house; how far?

A. From the tree?

Q. To the road right at the house?

A. Oh, where the car would come in.

Q. The same line you just described as being two to two hundred and twenty-five feet was the distance from the road to the tree on the same line?

A. The road right at the house?

Q. Yes.

A. The house is approximately—you've got a yard—fifty feet less.

Q. Fifty feet less?

A. I would say so.

Q. Now, with relationship to the house and the tree, is there a creek?

A. Would you repeat that?

C. L. Bradley

I'm sorry I'm so dense, but would you repeat that question?

Q. With relationship to the area between the page 283 } house and the tree, is there a creek?

A. A creek?

Q. Yes.

A. Yes. What I would call a dry-water creek. Probably it has water in it when it's rained.

Q. And is there one or more than one?

A. Creek?

Q. Yes, or dry creek, creek or dry?

A. Well, over near the tree. I don't know. You wouldn't call that a creek; it's just a very small piece of water right there near the tree.

Q. All right.

Now, did there come a time when you found any slugs?

A. Yes, sir.

Q. All right.

And did there come a time when you found any casings?

A. Yes, sir.

Q. Now, where were the casings found?

A. In relation to the tree they were found out in the pasture field. You see, the tree would be on the left. The slugs were found out, not the slugs, the casings were found out to the right of the casings, facing the tree.

page 284 } Q. And were they found on the same side of the creek bed and the road as the tree?

A. They were found between the tree and the dry water creek or gully.

Q. And is the house on the other side of the dry-water creek and the other road?

A. Yes. It's further to the right and down.

Q. And the slugs you found were in a tree?

A. Yes, sir.

Q. Where is that tree located with reference to the property line of Sam Ervin's property?

A. In relation to his property?

Q. His property line.

A. It was found at the edge of the woods of one of the trees.

Mr. Morris: Objection, Your Honor.

Mr. Harrigan: I don't think it's responsive.

The question was: Where was the tree in relation to the property line.

C. L. Bradley

The Court: He hasn't had a chance to finish his answer. Go ahead.

The Witness: The tree was located, like I say, page 285 } somewhere between two hundred and two hundred and fifty feet from the house and there's one tree comes down to the edge of the pasture field and the property line. There's a fence out—I would say the fence around the pasture field from the distance from it to the house would probably be hundred, hundred ten, hundred fifteen feet, something like that. So it would be out from that.

Q. Now, what buildings are on that property?

A. Mr. Ervin's house; there's a shed back of his house; and on out in the pasture field on the opposite side of the pasture, the tree with slugs in it on one side.

On the opposite side—I didn't get near that—there was some kind of a lean-to or some kind of a shelter for his calf.

Q. Is there a well on the property?

A. I don't know.

Q. You didn't see a well?

A. I may have see it. I didn't pay any attention.

Q. Now, where were the shells that were found?

A. The empty casings?

Q. Yes.

A. They were out in the pasture field. One of them, I would say, was approximately twenty-five feet out from page 286 } the tree; and another was around fifty feet; and another was seventy to seventy-five feet or something like that.

The Court: Now, let me back up a minute.

The casings were those distances from the tree, were they?

The Witness: Yes, sir.

The Court: Fifty and seventy-five feet?

The Witness: Twenty-five, fifty, and seventy-five.

The Court: Twenty-five, fifty, and seventy-five?

The Witness: That's an estimate. We did not measure it.

The Court: All right.

How many casings were found?

The Witness: Three.

The Court: And if you were standing at the tree looking toward the place where the casings were found would you be looking towards the house or off on some other direction?

C. L. Bradley

The Witness: No. You would be looking straight up the pasture field.

I could draw you a diagram.

The Court: I'll show you a sketch that's been used in evidence, Commonwealth's Exhibit "A".

This sketch shows the house with the fence
page 287 } around house just off the road coming off the highway.

I think it does not show the road going around the house, as you testified.

This long line (indicating) is supposed to be the dry gully.

On that, can you locate the approximate location of the tree where the slugs were found?

The Witness: What is this (indicating) supposed to be?

Mr. Harrigan: I object to the witness—

Mr. Hassan: (interposing) I object to the whole thing.

The Court: Is that in accordance with your recollection of the outline of the property?

The Witness: No, sir. Whatever this is here—

The Court: Disregard that. I don't know what that's supposed to be.

Without that, is it roughly accurate?

The Witness: This line here, what does that represent?

Mr. Hassan: If your Honor, please, let him draw his own.

The Court: All right. Draw your own.

page 288 } The Witness: The dry gully comes down here somewhere. The casings were found here.

The Court: Make an "X" where the casings were found.

The Witness: Now this—can I draw the lean-to?

The Court: All right, sir.

The Witness: This lean-to is up in this area but to answer your question, they were out from the tree which would be—the house is this way, at an entirely different angle.

The Court: That answers the question.

You're still examining, Mr. Hassan.

Mr. Hassan: I have no further questions.

The Court: Cross examine, Mr. Harrigan?

I will receive this diagram that he's drawn, illustrative of his testimony and mark it Commonwealth's "E".

Mr. Harrigan: I object to that going into evidence. It's not to scale and it's a rough sketch and what aid it would be would be certainly little, if any.

The Court: I overrule the objection and receive it.

C. L. Bradley

(Whereupon, Commonwealth's Exhibit "E" was admitted into evidence.)

page 289 { The Court: It is received for the only purpose of illustrating to me the place where the casings were found in relation to the house and the dry gully and the tree and not for any other purpose.

Mr. Harrigan: Note my exception on the ground there's no showing at all that those particular locations drawn on that are anywhere near the proportions and they're misleading. They're confusing and that's all.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Let me ask you one question:

Did you find these casings?

A. I found two of them.

Q. All right.

Now, you're Investigator Bradley, is that right?

A. Yes, sir.

Q. Now, on the 16th of September you went to the house earlier that day, didn't you, before you got your search warrant?

A. Yes, sir.

Q. Who went with you?

A. Trooper Kelly and two detectives, Crickenberger and Egle from Arlington.

page 290 { Q. And did you drive right up on the property by the house?

A. Yes.

Q. Were you driving?

A. No. Trooper Kelly was driving.

Q. Did you get out of the car?

A. Yes sir.

Q. Who else got out?

A. All four of us got out.

Q. What did you do?

A. I was around the car and—

Q. (interposing) What do you mean, you were around the car?

A. I was right around the car and I believe I walked over towards the house.

Q. Were you looking around the car?

C. L. Bradley

A. I don't understand your question there?

Q. Were you looking or just standing?

A. I was standing.

Q. Were you looking for anything at that time?

A. No.

Q. What were the other people doing?

A. Trooper Kelly, he was the only one in uniform, and I believe I was the one who told him to go up to the door and see if anyone was home.

Q. Did he do that?

A. He did.

Q. Where was Crickenberger and these other officers? What were they doing?

A. Mr. Egle, Detective Egle, he was around the car and Mr. Crickenberger walked over around the edge of the field, over to the edge of the field.

I might add that Trooper Kelly and me went up to the door. I probably walked up halfway with him.

We went to the back door. The way this driveway is when you get out of the car it's more accessible to the back door, so you go there first.

Q. So you parked your car in the back?

A. To the side, whatever it's called.

Q. How did Crickenberger go over to this area?

A. He just went over to the edge of the field.

Q. Now, how long did you stay in that area at that time?

A. Less than five minutes surely. It was apparent there was no one there. It was the day that the hurricane Dora was coming in and clouds rolling in, misty rain
page 292 } at the time and weather looked like it was going to take a turn for the worst.

Q. So did you all get back in the car then?

A. Immediately.

Q. And that's when you went and got the search warrant, is that right?

A. That's when I went to Monterey to see the Commonwealth attorney but I wasn't able to locate him.

Q. And then you went to the County judge?

A. I went to see Mr. Beverage.

Q. When you got back to the farm with your search warrant how did you get on the property?

A. We came back to the farm and Mr. Miller, Tom Miller—

Q. (interposing) I didn't ask you that.

I asked you: how did you get on the property?

C. L. Bradley

A. How did we get on to the property?

Q. Yes.

A. We drove.

Q. When you say you drove, did you drive up the driveway?

A. There's only one driveway to the house.

Q. Where did you park the car?

page 293 } A. Up near the fence.

Q. Is that in the back of the house?

A. Side of the house.

Q. Side of the house.

Did you all get out then?

A. Yes sir.

Q. What did you do.

A. At that time Mr. Miller was there. He was either at the pasture field or coming into the parking area there and since Mr. Miller was there I told Mr. Miller we had been there previously.

Q. You had you search warrant at this time, didn't you?

A. That's right.

Q. Is this the first time you had seen Mr. Miller?

A. That was the second time.

Q. Okay.

A. And told Mr. Miller apparently Mr. Ervin nor members of his family were there and we put the warrant on the back door. And we asked did they use the back door. We wanted to be sure where we put the warrant they would see it.

Q. Have you seen the search warrant that was
page 294 } used?

A. Yes, I've seen it.

Q. Now, is that a true copy of the warrant which you posted on the back door?

Mr. Hassan: I object to that, Your Honor.

It's certified to by a clerk of Court and I don't think the trooper should be passing upon the authenticity of the clerk's certification.

Mr. Harrigan: The question was is that a copy of it.

Mr. Hassan: The question was: is that a true copy and I don't think it's a proper question to ask the state trooper.

The Court: That objection is sustained. But you may ask whether or not it appears to be identical to the one he used.

Mr. Harrigan: All right.

C. L. Bradley

By Mr. Harrigan:

Q. I will ask you that:

Does that warrant there appear to be identical to the one you posted on the back door of the Sam Ervin farm?

A. Yes. It looks like the same one.

Q. It is identical?

A. Yes.

page 295 } Q. All right.

Now, would you have searched that property had you not gotten that warrant?

A. That was my purpose in seeing the Commonwealth attorney.

Q. That's not what I asked you.

If you had been refused that warrant, would you have searched that property?

A. You're asking me, if I had gone to Judge Beverage and he had said "no, you can't go on there" would I have gone on without a search warrant?

Q. That's right.

A. I wouldn't have gone against the Judge's orders if he had told me I had no right to.

Q. Then, I take it your answer is "no" you wouldn't have without a search warrant?

A. If the Judge told me no, I wouldn't.

Q. All right.

Now, the distances that you estimated of where this particular tree was from the house. Would you go over that again, please? How far was the tree from the actual house itself?

A. I said between two hundred and two hundred and fifty feet.

page 296 } Q. Did you space this off or is this your approximation based on eyesight?

A. It's my approximation.

I play golf some and that's how—you usually know what club to use to take the green. Sometimes I'm close and sometimes I'm not.

I would say that would be close.

Q. You would say two to two hundred and fifty feet?

A. That's right.

Q. Now, were there certain pictures taken while you were there?

A. Trooper Kelly took some pictures.

Q. At whose instruction?

A. I believe Detective Crickenberger's request.

C. L. Bradley

Q. Now, these—when you go to this particular—started chopping on this particular tree, you did not know what was in the tree until you took the hatchet and chopped holes in it; did you?

A. No. We didn't know until we opened the tree up.

Q. Now, did anybody give you authority to chop in any trees there?

A. No.

page 297 } Q. All right.

Now, on these particular casings, how did you proceed out towards this meadow?

A. How did we proceed?

Q. Yes.

Was it a straight walk right out there?

A. No.

There's a gate you go through.

Q. All right.

Did you open the gate?

A. Go through the gate? We went through the gate and walked on out through *the* field.

Mr. Miller was there at the time and he pointed out the general area where he had seen Mr. Patler shooting.

Q. All right.

Now, this area you were looking in this meadow, was the house clearly visible from that area?

A. Yes.

Q. Now, you say you found two casings, is that right?

A. That's right.

The Court: I understood him to say three.

By Mr. Harrigan:

Q. You found two personally?

page 298 } The Court: I understand.

By Mr. Harrigan:

Q. You found two, yourself?

A. Yes.

Q. That first was the farthest away from this particular tree?

A. No. That, I believe, was the middle one. I believe it would be fifty feet from the tree. I'm not absolutely certain which one it was but I think that's right.

C. L. Bradley

Q. You're not sure. Is that what you're telling me?

A. I believe that was the one.

Q. Where did you find the first one?

A. Up around the road.

Q. You talk about a road. Are you talking about a road or a driveway, or just a little dirt driveway?

A. Not a hard surface road, just gravel or dirt. I don't know what it's used for.

Q. You don't know if that road is used to go to and from the well, do you?

A. No.

Q. Now, who found the other cartridge?

A. Detective Crickenberger.

page 299 } Q. Did you find any others, other than those three?

A. No.

Q. Now this one that you found that was seventy-five—did you find the one that was seventy-five feet from the tree?

A. Yes.

Q. Now, this seventy-five feet figure you're talking about, is that just an approximation?

A. That's right.

Q. It could have been longer, farther away?

A. Could have been.

Q. All right.

Now, how far was that farthest shell casing from the house?

A. It was straight over from the tree.

Q. I asked you in feet?

A. In feet?

Q. Give me an estimate of how far it was from the house?

A. I would say between, oh, around two hundred feet.

Q. Two hundred feet?

A. Um hmm (nodding affirmative.)

page 300 } Q. And how far was it, the fifty foot one, from the house?

A. It would be approximately the same distance.

Q. Two hundred feet.

And how far was the twenty-five feet one from the house?

A. Again, it would be approximately the same distance.

Q. All right.

Now, this two hundred feet figure is an approximation, is that right?

A. Yes sir.

C. L. Bradley

Q. Now, this fence that's in the back yard of this house, does that go all the way around the house, is there a fence in the back yard that's hooked on to this gate which you went through?

A. Is there a fence? Yes.

Q. Does it go all the way around the house or does it go somewhere else?

A. That, I couldn't tell you.

Q. You don't know?

A. I've seen it but I wouldn't want to say one way or the other.

page 301 } Q. So you don't know whether it went around this meadow around the house?

A. I know it was directly back of the house.

Q. All right.

Now, was there other fences farther back towards the edge of the woods?

A. Other fences? Are you talking about going to the pasture field, is there another fence somewhere else?

Q. You go to the meadow and walk by this tree you were chopping up and go back to the tree and there's a little clearing back of that tree, isn't there?

A. Yes, there's a small clearing in back of the tree.

Q. Now, beyond that clearing which is in back of the tree is there another fence?

A. I didn't see one.

Q. You didn't see one.

Take a look at this picture which is D-4, this area was here.

Now, does that refresh your recollection?

A. Yes I see it, but it still doesn't refresh my recollection on it. I didn't pay any attention to that fence. I don't even know if there's a fence there.

page 302 } Q. You can't tell?

A. I can't tell by looking. It looks like some fence is possible there.

Q. Are you telling us you don't know; is that what you're telling us?

A. That's right.

Q. All right.

Did there come a time when you looked around the house itself?

A. No.

C. L. Bradley

Q. Now after you found these cartridges, what did you do then?

A. After we found the cartridge case?

Q. Yes, after you found the cartridge case?

A. Well, we were getting the slugs out and piled them all together at the same time.

Q. You fellows had an axe that you dug these out with?

A. No.

Q. That's not right?

A. No. We had a hatchet.

Q. All right. A hatchet.

Did you take the hatchet with you when you page 303 } went up there or did you send somebody back for it?

A. We had the hatchet with us.

Q. Whose "we"? Who was carrying it; you?

A. No. It was just in the car. I don't remember who put it in there.

Q. All right.

Did you take it out of the car when you initially went up there or did you send somebody back to the car to get it?

A. I can't answer that. I don't know whether we did or not. I don't know if we had it with us or not.

Mr. Harrigan. That's all.

Mr. Hassan: No further questions of this witness.

The Court: May the witness be excused for the purpose of this hearing?

Mr. Harrigan: Yes sir.

Mr. Hassan: He and *Tropper* Kelly are returning, and he'll be back later in the week.

The Court: All right.

You will remain on call.

(Whereupon, a short recess was had.)

page 304 } Mr. Hassan: At this point, the Commonwealth rests.

The Court: Commonwealth rests on this point?

Mr. Hassan: Yes, Your Honor.

The Court: Mr. Harrigan?

Mr. Harrigan: Before we put on evidence, we have the rest of the motion to strike their evidence and strike the pictures and rule that the search was illegal on the property

and the evidence seized that's been presented at this stage. The search warrant and the affidavit has already been ruled on as being insufficient.

The only question remaining now is whether this particular evidence which was seized—and there are two points here.

The first I will not argue on because we're putting on evidence that it was in the curtilage. But the second point, we argue under the facts presented in this particular case is that it is not really issue either.

Now the facts presented was that certain officers, Officer Bradley and so forth went to the property initially and nobody was home. They did not search. They
page 305 } went back and secured a search warrant.

He has testified that had he been refused a search warrant they would not have searched any part of the property; they would not have gone to the house, around the house and near the house, and obviously they would not have continued on a search back to this particular meadow.

Then it comes down to assuming that that is a state of facts in the case, that the warrant for the search of the property was illegal and as a result of that illegality they entered the property and it was one continuous search back of the property they discovered evidence and through leads and on the basis of that search warrant and that search warrant only they seized this property.

The property was illegally seized and based on an illegal search warrant and more or less a fruit of that particular search warrant.

There is a case that is right in point on this and this is a 1954 case, *Simmons v State, Simmons v State of Oklahoma*.

In that case it was disclosed that two officers went to a farm occupied by the father of defendant and his sister. Shortly after they arrived defendant and another man
page 306 } drive up to the farmhouse in defendant's automobile. They came from the pasture on the farm where defendant testified he had some cattle grazing.

The officers had no warrant to search either the farm or the automobile of defendant. They had no probable cause but they proceeded to search the defendant's automobile and found six pints of whiskey.

Because they thought there was more, the officers followed the car tracks about 250 feet to where they led to a boat which they noticed had been recently moved. They raised up the overturned boat and found twenty-eight pints of whiskey.

Without argument it was held that the search was illegal

and without probable cause. This is the same situation we have here is that the search warrant was illegal and without probable cause.

"The possession charge out of which this conviction arose was in connection with the seizure of the twenty-eight pints of whiskey found under the overturned boat. Defendant contends that the search, being illegal and void in its inception, could not ripen into a valid search irrespective
page 307 } of anything else that might have occurred, and that the search of the automobile was only the beginning of a search which lasted until the discovery of the contraband under the boat. The State contends that the liquors were not found within the curtilage of the dwelling house on the premises; that the premises were owned and possessed by defendant's father and sister and accordingly no warrant was necessary to make a search of the pasture outside of the curtilage of the farmhouse and secondly, the defendant could not complain of the illegality of the search of the pasture.

"In so far as defendant's contention is concerned, it is apparently the first time the exact question here presented has been before this court as neither the State nor defendant have been able to cite any authority from this state upon this proposition. We are convinced that if the officers had gone into the pasture without a warrant of arrest or search warrant and made a search of the woodland area outside of the curtilage of the dwelling house, the search would have
page 308 } been valid under many authorities from this jurisdiction.

"However, the officers did not do that. They first made an illegal search of defendant's automobile and acting on the basis of the leads thus obtained and because of the suspicion developed from the illegal seizure of whiskey in the automobile, they followed the car tracks back to where defendant apparently kept his whiskey cache. We are convinced that the search was void *ab initio* and that all of the steps taken by the officers constituted one continuous search.

"In *Edwards v State*, 83 Okl. Cr. 340, 177 P. 2d 143, this court held that a search and seizure illegal at its inception cannot become legalized by what it brings to light; its legality must be determined by the situation as disclosed before the search was made, citing 79 C. J. S., Searches and Seizures, § 51, page 809.

"Although not in point with the facts in the instant case,

the case of *Thomas v State*, 25 Okl. Cr. 409, 220 P. 976, discloses the trend of authority in situations similar to that which confronts us. It was there held:

‘Where an unauthorized search and seizure is
page 309 } commenced and in progress, the issuance of a
search warrant for the purpose of making valid
that which at its inception was illegal will afford no protection to the officer making such search and seizure.’

“See also *Dean v State*, 37 Okl. Cr. 396—

The Court: (interposing) What is the citation of that case?

Mr. Harrigan: *Simmons v State of Oklahoma*, 277 Pacific, 2d, 196, a 1954 case.

Now, this is almost on all fours with what we have here. We don't have the situation where the officers entered from within the woodland or way back where the officers found this out of the curtilage or within the woods, but there may be old Virginia cases where they found stills and so forth hundred and hundreds of yards away.

We have a situation where—and all the testimony indicates this—they never would have searched had they not secured that *warrant* and trooper Bradley has testified to that, and that's the only evidence in the record.

page 310 } They secured the warrant and entered right
on—they parked the car right by the house, tacked
the warrant on the door and under the color of it they were on
the property.

While they were there he testified he talked to Miller. He was right on the property and Miller pointed out certain areas for him to look at and pursuant to that lead they went to these areas under cover of that search warrant and under color of that search warrant they searched and found certain things.

Our position is that the search was illegal to start with and the court has so held that the affidavit was insufficient and therefore our position is that it was void *ab initio*; that the mere fact that they are now attempting to not go under the search warrant and shifting their ground, which we contend they cannot do, they cannot ripen into so sort of a legal search when right up to the very end it's based on illegal affidavit and search warrant under the Statutes of Virginia and the Constitution of Virginia and the Constitution of the United States.

And based on this case and the *Wong Sun* case,
page 311 } which is probably the leading case, which still

supports this view and that is if evidence is suppressed as a result of an illegal search or are the fruits of that particular illegality leading to evidence that is discovered all of the evidence is tainted by the search and certainly here it could not be successfully argued that it was an independent search starting way back outside the curtilage, which we do not for a minute contend was outside the curtilage, so based on this case our position is there is no issue on whether it was inside or outside the curtilage because the evidence clearly shows it started right by the house based on an illegal warrant and that was illegal at its inception and cannot ripen into a valid search.

The Court: It won't be necessary to reply, Mr. Hassan.

I'm going to overrule the motion. I think the distinction in the cases cited is that both Wong Sun and the Simmons case is that in those cases the illegal search led to the discovery of a lead without which there would have been no further search.

The further search then was the fruit of the page 312 } illegal search and it's excluded for the same reason that an immediate fruit of an illegal search would have been excluded.

In this case under the evidence that I have heard thus far there was no illegal search that produced any lead. True, the search warrant was no good, but the evidence that led to the search in the field was a conversation with a man that was named Miller, although no search warrant was necessary to find Mr. Miller.

They just talked to him and he evidently just gave them information which led to them going out to look for the slugs and casings.

Therefore, I cannot say, as a matter of law, the examination of the pasture and the tree were the fruit of an illegal search.

Now, this leaves open the question as to whether or not they were within the curtilage so as to protect under the Constitution from illegal seizure. The commonwealth's evidence does not show on its face that they were within the particular area. It tends to me to indicate to the contrary. But I would—

Mr. Hassan: (interposing) One more issue, page 313 } Your Honor.

My theory is that this is abandoned property.

Mr. Harrigan: Your Honor, we're jumping from one thing to another.

Mr. Hassan: He wasn't here Friday so he doesn't know.

Alice Patler

Now I laid this theory out for the court on Friday. I don't know how he gets in now a day late—I laid this theory out on the abandonment of property in saying that it was not within the curtilage for this court when the court asked the question over the objection of Mr. Morris—

Mr. Morris: (interposing) If Your Honor please, the record will speak for itself. The first time Mr. Hassan used that word—

Mr. Hassan: (interposing) I said it was laying out there in the field.

Mr. Morris: (continuing)—was about twenty seconds ago. He never brought that theory up under any circumstances and I submit to the court the record will reflect what he did, and if he did it was down in his office and the reporter and I wasn't there.

The Court: The motion made by Mr. Harrigan page 314 } is denied.

Do you gentlemen wish to reserve exceptions?

Mr. Harrigan: Exception based on the grounds stated.

The Court: And likewise, the motion to strike the photographs from evidence is denied.

Mr. Harrigan: Exception.

The Court: Does defense wish to question?

Mr. Harrigan: As to the photographs the testimony was that they were taken out from the house and they were taken under the authority of that particular warrant.

The Court: Do you wish to present evidence?

Mr. Morris: Alice Patler, please.

Whereupon, ALICE PATLER, was called as a witness by the defense and having been previously duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. Kindly give the court your name.

A. Alice Patler.

Q. You're the wife of the accused, Mr. Patler?

page 315 } A. Yes.

Q. Now, directing your attention to the farm in which you reside in Highland County, Virginia, did there come a time when a tree on that property was cut up?

Alice Patler

A. Yes.

Q. By police officers?

A. Yes.

Q. Do you know where that tree is?

A. Yes I do.

Q. Tell the court, Mrs Patler, approximately how far that tree is from your residence, the home itself?

A. That's about fifty yards from the house.

Q. About fifty yards from the house?

A. Um hmm (nodding affirmative)

Q. Now, at any time has that immediate area of that tree been used for any purpose?

A. Yes.

It's used for a picnic area. We always keep the grass cut in that area for that purpose and the children play there quite a bit. It's a play area also.

Q. And beyond the tree, that particular tree, is there a fence?

page 316 } A. Yes there is.

Q. And around the tree has it been cleared out?

A. Yes there's a clearing behind the tree.

Q. And did you use that area frequently?

A. Yes, quite frequently.

Q. For purposes of eating?

A. Yes.

Q. And playing?

A. Yes.

Q. And you say that you keep the area around it mowed?

A. Yes. The grass is kept mowed for that reason.

Q. Any cows eat around that tree at all?

A. I never seen any cows down there.

Q. Is that the area where that tree is (indicating); is that habitually used by the family and the children?

Mr. Hassan: He's leading, Your Honor.

The Witness: Yes.

The Court: Do I take that to be an objection?

Mr. Hassan: The objection is obviously without citation.

Mr. Morris: Fine. Thank you, Mrs Patler.

The Court: Mrs. Patler, is the fence that is
page 317 } beyond the tree on the property line?

The Witness: I think so.

The Court: All right.

Go ahead, Mr. Hassan.

Alice Patler

CROSS EXAMINATION

By Mr. Hassan:

Q. Mrs. Patler, did you measure the distance from the tree to the house?

A. Well, I stepped it off.

Q. You stepped it off?

A. Yes.

Q. Was that at the direction of counsel?

A. No. They didn't direct me to. We had been talking about it before, how much it was, but they didn't direct me to do it.

Q. What distances have you stepped off before?

A. I don't understand what you mean.

Q. Well, are you in the habit of stepping off distances?

A. No.

Q. What is the length of your stride?

A. Well, I just stepped it off, that what I thought was approximate feet.

page 318 } Q. Now, when is the last time prior to the 16th of September that you attended a picnic in this area?

A. It was sometime in August.

Q. Sometime in August?

A. Yes.

Q. And before that, what was the last time?

A. Well, during the summer. I don't know exactly a date. We had picnics there during the summer.

Q. How many times?

A. Just this summer I would say maybe—we had picnics there maybe four times, five times.

Q. Any other areas down there where you had picnics?

A. No. Usually we have them right there in that area.

Q. Now, what facilities are there in that area for playing, for children?

A. Well, the children play there because they usually built a fort right up in that area and they just play there.

Q. Is the fort built up in the woods behind where the tree was?

A. No. It was usually built right close to the tree.

Q. Right close to the tree?

page 319 } A. Um hmm (indicating affirmative)

Q. And how old are these children?

A. Well, my two brothers, twins, are ten years old, and my son Mark played there, he's three.

Alice Patler

Q. How old is he?

A. Three.

Q. Do they play in the fenced area around the house?

A. Sometimes.

Q. You let your three-year old go out into the pasture to play by himself?

A. He plays there with the twins.

Q. But not without the twins?

A. Well, yes, he plays by himself, too.

Q. Out there in the pasture?

A. Well, around this area, around this tree in this particular area.

Q. Now there is a wooded area in behind the tree, is there not?

A. Yes.

Q. And a knoll behind the tree?

A. Yes.

Q. And is the tree frequently used for target
page 320 } practice?

Mr. Morris: Objection, Your Honor.

There's been no testimony on direct examination about target practice and now he's trying to get into something that's coming up later on.

The Court: The objection is sustained.

By Mr. Hassan:

Q. Did you ever do any target practicing there?

Mr. Morris: Objection. There is no testimony on direct examination on target practice at all.

He's going beyond the scope of direct examination.

The Court: Well, this is a close question because *conceivably* it could be proper cross examination if it were determined whether or not this is a part of the curtilage. However, I think the damage could be done by getting this into the record prematurely on this point outweighs whatever evidenciary value it had, so I sustain the objection.

Mr. Hassan: If Your Honor please, I take exception to your ruling on the ground that it's quite obvious this is a target area. The evidence has shown there were
page 321 } bullets in the trees and no one allows cows or children to play in a target area, and the testi-

Sam R. Ervin

mony of this witness in that respect is *incredible* to believe.

Mr. Morris: I object to that. That's summation.

The Court: She hasn't talked on this point. Do you have any rebuttal?

Mr. Morris: Just one question.

REDIRECT EXAMINATION

By Mr. Morris:

Q. With respect to the fence that surrounds the house, why is that fence there?

A. The one around the house is for the dog.

Mr. Morris: That's all, thank you.

The Court: All right.

May the witness be excused?

Mr. Morris: Yes, sir.

The Court: Any further evidence?

Mr. Morris: Mr. Ervin.

Whereupon, SAM R. ERVIN, was recalled as a witness by the defense and having been previously duly
page 322 } sworn was examined and testified upon his oath
as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. State your name, please.

A. Sam R. Ervin.

Q. Mr. Ervin, you testified previously, as recent as last Friday, didn't you?

A. Yes.

Q. And you were asked whether or not—

Mr. Morris: Your Honor, I'm trying to lay a foundation.

By Mr. Morris: (continuing)

Q. Do you know whether or not a certain tree was cut up?

A. Yes.

Q. Since Friday what have you done?

A. Well, you had some pictures here and you showed me those last Friday identifying the tree so I went down and looked it over this weekend.

Sam R. Ervin

Q. Those pictures we're referring to are the ones the prosecution brought?

A. That's right.

page 323 } Q. And did you look the tree over?
A. Yes.

Q. And approximately, Mr. Ervin, how far is that tree from your home?

A. About a hundred and fifty feet.

Q. A hundred and fifty feet.

That tree—is the area surrounding that tree there used for any purpose?

A. Well, that's where we eat around there, picnics and so forth. We kept it mowed.

Q. Kept it mowed and picnicked there.

Did children play there?

A. Yes. The kids had some boards there where they were building some kind of fort or something.

Q. In fact, there were boards in the picture, weren't there?

A. Yes.

Q. The fence that surrounds your home Mr. Ervin, what was the purpose of that fence?

A. We had a big, German shepard dog and it was to keep it in there.

Q. Did you?

A. Yes.

And we kept him—it was to be sure he didn't
page 324 } get any of the neighbors sheep or anything.

Q. Is there a fence beyond that particular tree we're discussing, Mr. Ervin?

A. Yes. The line fence goes up about twenty yards on the other side.

Q. Did you clear out the area around that tree?

A. Yes.

Q. Did you have the area cleaned out around that tree, had the other trees cut?

A. There's no trees to be cut around there.

Q. There wasn't?

A. You see, up around that tree it's the closest area to the house which had both the creek and the shade so it would be an obvious place for picnics and stuff because there's no other place with shade and a creek, that close to the house.

Mr. Morris: Thank you.

No further questions.

Sam R. Ervin

CROSS EXAMINATION

By Mr. Hassan:

Q. Have you ever used this area for target shooting?

Mr. Morris: Objection. Beyond the scope of direct.

The Court: Sustained.

page 325 } Mr. Hassan: May I have an exception.
No further questions.

The Court: May the witness be excused?

Mr. Morris: Yes, Your Honor.

The Court: Mr. Ervin, you're excused for the purpose of this hearing.

Any further evidence for defense?

Mr. Morris: No, Your Honor.

The Court: Anything further for commonwealth?

Mr. Hassan: No, sir.

The Court: All right.

Gentlemen, I'll hear your argument on this point.

Mr. Morris: If Your Honor please, we're not relinquishing the argument of Mr. Harrigan at the conclusion of prosecution's evidence.

We renew that now. Also, we would like to go into the law of Virginia, so to speak, which is *Bare v. Commonwealth*, 122 Virginia 783, wherein our Supreme Court has held that:

page 326 } "The curtilage of a dwelling house is a space
necessary and convenient, habitually used for
family purposes and the carrying on of domestic
employment; the yard, garden or field which is near to and
used in connection with the dwelling."

And under that particular case they cite many other cases including the Commonwealth of Kentucky and the Commonwealth of Massachusetts.

The Court: That's B-a-r-e?

Mr. Morris: Yes, Your Honor.

In furtherance of that position our Supreme Court has maintained the curtilage as known to the common law—this is a 1917 case—

The Court: That was the hard cider case?

Mr. Morris: Yes, Your Honor.

And they cite the common law as it was then known in 1917, our supreme court indicates that the curtilage is not that re-

stricted area which was in the sense of the main area, but our supreme Court indicates that the curtilage now extends to any area that is convenient for the habitation of those people who live there.

It would be our position that our testimony is page 327 } *uncontroverted* as to Mr. Ervin and Mrs. Patler, both who testified, they both testified without any contradiction by the commonwealth that this is an area they use habitually. They use it for a play area, and there's a creek there for picnicing purposes and we feel that based on their testimony that was uncontradicted it should help the court to determine this was definitely within the curtilage of the main dwelling house, plus the fact that commonwealth's evidence produced shows this tree was closer to the house than the barn and in many, many cases hold the barn is certainly a part of the curtilage; or any other type of building or house, as the case may be.

So our position, without any hesitation, as the testimony now stands before the court, is that the area where the slugs were removed was an area habitually used by the family and definitely within the curtilage.

The Court: Mr. Hassan?

Mr. Hassan: If Your Honor please, we must look at this entire picture and not to an interpretation of a portion of it.

First of all, in Virginia the question of a search of any is governed by *McClannan v. Chaplain*, 136 Vir- page 328 } ginia 1, which makes unchallengable by the legislature the common law of search and seizure.

The protection of the search warrant and of the Constitution of Virginia and of our State Legislature is the protection of the personal rights of the individual; it is not the protection of property rights and trees and such. And in this case, the seizure does not require a warrant for search and seizure; it depends upon the reasonableness of the search.

There is no private right of Sam Ervin who is the owner of the property, who is the resident of the *property*, which has been violated by what is obviously on the face of the testimony a reasonable search.

Had the recitation been made from this stand to the warrant as it undoubtedly was to the county judge, the warrant affidavit would have been a valid affidavit and that was decided without affording the commonwealth an opportunity to lay this foundation, a discussion of this matter of property and personal rights, to discuss this matter on whether or not the son-in-law is a member of the family. And the *Rees* case, 203 Virginia 850, 864, holds that the home of the

parent is not the home of the son. Further, the
page 329 } home of the parent is not the home of the daughter; and the son-in-law is even more remote than a son or daughter and under the law in Virginia there would be no personal right had the search been made of the dwelling itself, and there is no personal right in the search of the property of Sam Ervin.

All this is laid out, and I know the judge is familiar with it.

In 134 Virginia 787, *Zimmerman v. Bedford*, as well as the *Rees* case, we go on the basis of common law. When we go on the basis of common law as we do in many states we then arrive at the question of what was to be searched and was a warrant necessary or could a common law search be conducted.

Now there are two schools of thought on the curtilage. The curtilage in English law—and the English law is the law upon which our common law is based—was the courtyard, and the courtyard was enclosed by a wire fence, I mean a stone wall which became a wire fence in this country. The stone wall was to keep out highway robbers and if the owner was wealthy, they had a moat and a stone wall,
page 330 } and it was that area immediately enclosed which was the courtyard of the property, not the boundary fence of the property.

When we came to America, some adopted a broader position of extending a man's castle to the limits of his property. In some areas it was that area not including his field but that portion upon which he built his home.

In Virginia we have the narrow definition and it has had the narrow definition time and time again that it is that area or space necessary and convenient as habitually used by the family for the purpose of domestic employment, and that's the courtyard of the house and the carrying on of domestic employment and it says it includes the barn, if there be one, and it need not be separated by a fence from other lands.

We did away with the stone wall and we did away with the fence, and we said the immediate area for domestic employment. The milk barn, the smoke house, the dairy barn, the kitchen garden were in the curtilage and they didn't have to have a fence around it. The reason for that is they usually had a wooden hedge. You see them all over the
page 331 } country.

But what is the immediate area that surrounds the Ervin House as the curtilage? The natural boundary of the creek, the natural boundary of the road, the

natural boundary of the dry gully; if not, the fence around the woodshed and the house, would be the curtilage. Then, this would have been an invasion of the personal rights of Sam Ervin on the face of that warrant if some search had been made there.

Now, Mr. Harrigan talked about the case of obtaining the lead, yet he sat here and heard Investigator Bradley say they had obtained the information first. They knew where they wanted to look. They knew what they wanted to look for and that was all they wanted to look for and that was not within the curtilage. They didn't need a warrant there and if they had gone there they would have been trespassing without a warrant. And if they went with a bad warrant they would still be trespassing.

But there isn't one single case that would suppress the evidence obtained within or out the curtilage, with *our* without a warrant on the basis of a trespass upon the land.

Now we have several cases, two cases in par-
page 332 { ticular. This matter is well settled in 1924 by the
Supreme Court of the United States.

In 265 U. S. 57 which is located on page 445, 446. The court
The Court: Do you have the Supreme Court Reporter
citation?

Mr. Hassan: No, it's not here, Your Honor.

The officer in this case entered the house but being told there was no whiskey there, left it, but found outside a jar that had been thrown out and broken and that also contained whiskey. While the officers were there other cars stopped at the house but were spoken to by Hester's father and drove off. The officers had no warrant for search or arrest, and it is contended that this made their evidence inadmissible, it being assumed, on the strength of the pursuing officer's saying that he thought they were on Hester's land, that such was the fact. It is obvious that even if there had been a trespass the above testimony was not obtained by an illegal search or seizure.

page 333 { The defendant's own acts, and those of his
associates, disclosed the jug, the jar and the
bottle—and there was no seizure in the sense of the law when
the officers examined the contents of each after it had been
abandoned.

This evidence was not obtained by an entry into the house and it is immaterial to discuss that. The suggestion that the defendant was compelled to give evidence against himself does not require an answer.

In this case the evidence was not obtained by an entry into the house. There was evidence that sometime in July somebody fired a gun and left the shells in the pasture and the slugs in the tree and this has been admissible evidence. It's abandoned evidence and not within the curtilage, and if it were it would still be admissible into evidence.

In 206 Virginia 479, which is the case of *Hawley v. Commonwealth*, this is the case where a defendant was staying at a motel, registered under a false name, and giving a false address.

Before checking out on the same day, Hawley
page 334 } attempted to arrange the safekeeping of coins
in his possession; he asked the manager to place
the coins, which he said totaled approximately \$2,000, in the
motel safe.

The manager refused but acceded to Hawley's request that he be permitted to park the automobile in front of the office. The automobile remained there on the motel premises eight or ten days where it had been parked by Hawley.

After this time the contents of that automobile were obtained by the police which were discovered to be evidence of a burglary in that case the court held that it was abandoned material and it was not necessary to have a search warrant to obtain it; that it was no invasion of the rights of the privacy of the defendant.

Our position, Your Honor, is that this evidence should not be suppressed. It was abandoned in the field and was in the tree. It was not within the curtilage where even the rights of the defendant would be protected by it. And a trespass on the property does not warrant the suppression of evidence.

Further, the status of a son-in-law is not given the protection of our statutes as required in search warrants and
page 335 } therefore the search was reasonable even if it
had been within the curtilage.

The Court: Do you wish to respond?

Mr. Morris: If Your Honor please, in response to Mr. Hassan, he refers to the *Rees* case which is the case where the parents gave consent to the search.

The F. B. I. went to the home—it was without the state, as I recall—they went to Maryland and asked the parents if they could. That's the sum total of the *Rees* case.

As far as the *Hester v. the United States*, that is a case where the police shot at these guys and they dropped their jugs and the jugs broke, and they took off. So they were not there for any purpose of a search.

In fact, the Supreme Court said in that case that the defendant's own action and those of his associates disclosed the jug, and jar, and bottle, and there was no seizure as a matter of law.

The particular difference in *Hawley v. Commonwealth*, which is the most recent case, 206 Virginia, is a case where the man was out of the area and gave a phoney name and address and said that he would be back. Eight
page 336 } days later the manager of the motel called the police and said we have a car here, what should we do with it.

The police came and took the car away and found the evidence. There was no search or seizure either.

It's our position that that tree was within the curtilage of the main dwelling house, that being in effect, any area where the family uses it, that would be the curtilage.

If I could refer the court to *Corpus Juris Secundum*, which it cites—here again, we go back to the *Bare* case—it says the yard, or garden, or field which is used to or in connection with the dwelling is the test that has to be applied.

The testimony was that area was used for that purpose, which was within fifty yards of the main dwelling house. The fence around the house was to keep the dog in. That's not unusual.

In this case, Mr. Ervin had the fence around the house to keep the dog in. So it's our position that the tree was within the curtilage.

Mrs. Patler testified that the children played
page 337 } there and ate there when the occasion arose; Mr.

Ervin said it was the most logical place to use because of the creek and the shade.

There is another case I would like to refer the court to which is on searches and seizures in which cattle were about a hundred yards from a house and in a lot adjacent to the barn were within the curtilage and that it is unlawful to search curtilage of residence in the absence of a search warrant first being had and obtained. That's a hundred yards away.

The Court: That is that case?

Mr. Morris: That's a 1965 case, Your Honor. *Springley v. State* which came out of Oklahoma, 403 Pacific 2nd, 253.

So, Your Honor, unlike those cases cited by the commonwealth, where no search warrants were had—and we strongly object at this stage of the proceedings bringing in another theory or another argument as to abandonment, and the court I'm sure recognized as well as anyone else that

there is nothing in the record, that the record will reflect that he never mentioned it before today.

Further, on the activity of policemen, title 18.1, 117 of the code of Virginia says that it shall be unlawful to page 338 { pick up, dig up, cut up, break, injure, burn or destroy in whole or in part any tree, shrubs upon the land or property—

Mr. Hassan: (interposing) Then I suggest he get a warrant down to the proper county.

Mr. Morris: I would like to continue, if Your Honor please.

It was just to show by citing that to the court the illegality of the actions of the officers down in that area.

As far as the search warrant, he's the prosecutor, and if a law is being breached or broken it's an ideal opportunity—

Mr. Hassan: (interposing) I object to the personal comments of counsel.

Mr. Morris: (continuing) —to prosecute those individuals violating the law.

That's our argument, Your Honor.

The Court: The courts view of the commonwealth theory of abandoned property as being indistinguishable from that of properties being outside of the curtilage on the theory that property that is left in the home is construed page 339 { tively in possession of those in the home; property that is left in open pasture or woods is not constructively in their possession anymore.

The Constitution of Virginia forbids general warrants. The Constitution of the United States says that the houses, personal papers, and effects of citizens shall be protected from unreasonable search and seizure.

We're not dealing here with effects in the usual sense. We're not dealing with papers and we're not dealing with persons.

The question then resolves itself as to whether or not we're dealing with houses. Therefore, the argument on the curtilage becomes very much in point. Unlike the decisions in some states which apparently construe the dwelling house to include all of the property which is huddled in that location, Virginia seems to adhere rather rigorously to the common law view that the curtilage is that area around the dwelling house which is reasonably a part of the dwelling because it's used for necessary purposes in connection with habitation.

In former times that cluster of outbuildings which was necessary for the order and convenient use of page 340 { the dwellers of the house was included in the curtilage whether or not surrounded by a hedge or fence or wall or moat. That would be the spring house, the

kitchen, a summer kitchen, the store house, a root cellar, necessary houses of the kind which servants would go to in order to prepare the daily meals. Places where the family resorted to every day. Barns were and sometimes were not considered to be within the curtilage depending on whether they would be used for daily purposes.

In this situation, it appears to me the curtilage of the house for all practical purposes was the fence which Mr. Ervin said was used to bound the dog. The family did not during daily use have to go outside that area, where the casings and slugs were found.

The use of a spot remote from the house because it's a nice, cool, shady place, by a stream for picnicing purposes is almost antithetical to it's being within the curtilage. They don't have picnics in their homes or on their porches. They go to a secluded place. Therefore, it's use as a picnic spot and a place where the children might go to play and
page 341 } build a fort seems to be not within the curtilage and shows to my mind a use by the family as one somewhat remote from the area used for the purpose of daily habitation.

Accordingly, it's the court's view that the property which was found there and sought to be introduced into evidence was not seized under the warrant and that no warrant was needed for it's acquisition, so therefore, will not be suppressed.

The motion is denied.

Mr. Harrigan: Exception.

The Court: Exception is noted on the grounds stated in argument.

* * * * *

Voir Dire

11-27-67

page 2 }

PROCEEDINGS

The Court: Ready, gentlemen?

Mr. Hassan: Ready for the Commonwealth.

(Whereupon reporter is sworn.)

The Court: Mr. Patler, are you ready for the trial?

The Defendant:: Yes, Sir.

The Court: All right.

Gentlemen, are you ready to begin the selection of the jury?

Mr. Hassan: If your Honor please, there is a room full of witnesses. I understand you were first going to swear witnesses and allow them to be excused, and the back room is full of witnesses, and I think we should get them out of the way to have a room available for the jury.

The Court: All right.

All witnesses in attendance at this time let them be brought in.

All witnesses who are now attending the Court and are expecting to testify in the case of *Commonwealth v. John Patler* stand here, now.

Is there anyone else?

Voir Dire Mr. Hassan: There are others not here now
11-27-67 which I will want to call.

page 3 } Mr. Morris: Does the Commonwealth have witnesses not here today?

Mr. Hassan: There are certainly others which are not here today which are attending to other matters in this connection and are not here right now.

The Court: Let all of these prospective witnesses be sworn.

(Whereupon witnesses were sworn.)

The Court: Ladies and gentlemen, those of you who have now been sworn as witnesses are excused from this Court and must remain outside of the Court until your testimony is called for.

Now, in the case of many of you, your testimony will not be called for for several days. The attorney who calls you, either Commonwealth or defense, will call you and ask you or give you the time you are expected to come here, so you should remain available on call for that and let them know where you are so they can reach you.

Now, while during the time this trial is in progress you are to remain outside the Court Room until your testimony is completed and you are excused. You are witnesses in this

case and you will continue to be until you are excused. The Court will tell you now that you are
11/27/67 prohibited from discussing this case with anyone
page 4 }

other than the attorneys in the case, the Attorney for the Commonwealth and his assistants and the attorneys for the defense and their assistants, and you are not required to discuss the case with them. You may, if you wish, remain silent until you testify on the witness stand,

but if you wish to do so you may discuss the case with those attorneys and no one else.

You must not permit this case to be discussed in your presence by other people, and you must remain away from any publicity, such as newspapers and television or radio or other news media concerning the case and keep your story to yourself entirely.

Do not discuss it with any members of your family or anyone else.

Mr. Hassan: One exception, Your Honor.

I would like to ask Robert Hancock, James Ballard and James Hampton Hall, if you anticipate getting to evidence today.

The Court: I do expect to.

Mr. Hassan: Mr. Ballard is a truck driver, and I didn't expect him until 1:30.

Voir Dire 11/27/67 The Court: Then we have Mr. Hancock and Mr. Hall who have been directed to testify today.
page 5 } What time, Mr. Hassan? You don't know what time?

Mr. Hassan: You tell me when we will get the jury selected, and I'll tell them when they will be testifying.

The Court: I'll ask you gentlemen to report here at 2:00 o'clock, report to one of the Bailiffs who will show you to a witness room.

The other witnesses are free to go, subject to instructions which I have given you and the instructions I have given you and the instructions I have given you with respect to witnesses also apply to those witnesses who are not here, and I will ask counsel to communicate the instructions to those witnesses who are not yet here.

You are now excused with the exception of those two.

Mr. Harrigan: There is one other matter, that of the material warrant. There are three witnesses I am depending upon to notify these witnesses, principally because they know who they are and where to get hold of them. They will be contacting these witnesses and they will be instructed not to discuss testimony and—

Mr. Morris: (Interposing) In view of his request, why doesn't he give us the names so we will know that they haven't—

Voir Dire 11/27/67 Mr. Hassan: Crickenberger, Light and Kadel, who are going to bird dog my witness to keep—

page 6 } Mr. Morris: (Interposing) Who are they?

Mr. Hassan: Enos, Dr. Beyer; they're going to

get six F.B.I. men, they're going to get these ladies; they have to arrange babysitters.

We have to tell them what time to be in here.

Mr. Morris: Our only comment to that, Your Honor, is obviously that we may not be able to do it without the benefit of assistance. We apologize for that now.

We don't have the resources he has to handle that as he does.

The Court: Is Mr. Koehl here?

Just stay behind for a moment, sir; all other witnesses not excused are now excused and free to depart.

Mr. Hassan: If your Honor, please, I would like to put on the record that I object to the issuance of a Bench Warrant for a witness by the defense for a witness that has been subpoenaed by the prosecution prior to the time he has failed to appear on that subpoena, and I think it nothing but as harrassment.

Mr. Harrigan: I'm going to object to his making speeches.

The Court: Mr. Hassan, you can make your objection out of the presence of the jury. If you 11/27/67 want to put something on the record, come up and page 7 { do it.

Mr. Morris: May we object to the form of his putting it on the record, and we would ask the Court to instruct counsel on both sides to stop speech-making and stop putting things in the record. I think it should be tried according to the rules of evidence and law applicable.

Mr. Hassan: I wanted to put that on the record and you didn't object to me doing it.

The Court: Your comments are noted for the purpose of the record.

Can you gentlemen tell me when you want Mr. Koehl to appear?

Mr. Morris: We subpoenaed him and the Sheriff's Office returned a "Not Found." That's why Mr. Koehl is before the Court this morning.

Mr. Harrigan: And we had information that he was out of state or planning to go out of state, and we wanted to make sure he was available.

Mr. Hassan: He was under subpoena for 10:00 o'clock this morning.

The Court: Under the circumstances, it seems Voir Dire to me appropriate that you give him a time certain now that he's present in the Court. The 11/27/67 page 8 { Bench Warrant will be released and the Bond released.

Give him a time certain.

Mr. Hassan: As far as the prosecution is concerned, I will be satisfied with him being subject to call. Let the defense set the time.

Mr. Morris: Unfortunately, if the prosecution is not going to be able to tell the Court what time, we will ask for a return every day. We would rather not do it that way for his own convenience.

Mr. Hassan: He's going to testify, but I can't tell whether it's Wednesday or Thursday.

Mr. Morris: Wednesday or Thursday will be adequate.

The Court: That's enough, Mr. Hassan.

Mr. Koehl, you're excused now until Wednesday morning at 10:00 o'clock and the Warrant that was issued against you and the Bond will be released. You are recognized in this case as a witness for your appearance Wednesday morning at 10:00 o'clock.

Gentlemen, it seems to me that we might as well recess for lunch.

Members of the jury panel, the selection of the Voir Dire jury in this case may take some time, and we have 11/27/67 } been involved in other matters this morning which page 9 } made it impossible to begin at 10:00 o'clock.

Therefore, we will now recess for lunch until 1:45. I'm going to give all members of the panel the same instructions, substantially, that I would give if you were sworn as the jury, because a number of you will be, and at this time it is impossible to tell which will be and which will not.

You are not in custody of the Sheriff, but in view of the fact that you are to be jurors in this case and in view of the fact it has received publicity and will receive more publicity, I must ask all members of the panel during this recess not to discuss this case nor permit it to be discussed in your presence nor relate any news counts of it nor listen to any radio or television broadcast of it. Keep your minds free of influence concerning this case which otherwise might come to you during the ensuing period of an hour and a quarter.

You are now excused until 1:45.

Court will recess until 1:30.

Mr. Morris: May we approach the bench?

If Your Honor please, without too much interruption, I can't find half of the prospective jurors on the list.

The Clerk: They're not in alphabetical order.

Voir Dire The Court: Well, why don't you have one of your 11/27/67 associates examine the list so that he can check it page 10 } off for you.

Mr. Morris: All right, Your Honor.

(Whereupon the jury panel is sworn.)

The Court: Those members of the jury panel who are still in the Court Room, I would ask you to listen to the questions which are addressed to the panel. If any of this panel should then stand aside, it would not be necessary to ask the same questions again of you if you are then called to fill their place.

In order that we may save time, then, I will ask you to pay attention to these questions as though they were asked of you as well.

Mr. Hassan: If your Honor please, I'm going to ask each individual juror be examined separately.

The Court: Does the defense have any comment?

Mr. Morris: It's his Motion.

We recommend that the Motion be granted. We have no objection. We think it's a wise approach to be formed.

The Court: I understand, but I'm not going to do it.

Mr. Morris: Then would the Court note our exception? We feel it would be necessary to this particular action that the Commonwealth's suggestion be followed.

Voir Dire We move on that basis and apologize for the 11/27/67 first comment maybe because I assumed that the page 11 } Court wanted to know if we had moved that be done.

Mr. Hassan: Exception to the Court's ruling.

Mr. Morris: Exception, please.

The Court: The exceptions are noted. I'm going to proceed in this fashion, gentlemen, because I don't wish to consume an undue amount of time in *voir dire* examination, and I think the examination of the panel together can be done without prejudice to any party in the case and should be done that way.

Extended individual *voir dire* examination of prospective jurors can, I think, lead to more error and prejudice than to do it the way which is customary in Virginia.

I will rule that I'm going to examine the panel myself, and then I will rule on questions which counsel propose to ask before they're asked in order to see that they are relevant and that way I trust that no improper questions will be put to them.

Mr. Hassan: If your Honor please, so the record may be straight, I'm not aware of such custom in Virginia. I've tried several cases of the magnitude of this case

Voir Dire in which the jury panel has been examined separately in this Circuit Court.

page 12 } The Court: Ladies and gentlemen of the panel.
The indictment in this case charges the defendant John Patler with murder of George Lincoln Rockwell on or about the 25th day of August, 1967, in the County of Arlington.

Mr. Patler is represented by his attorneys, Mr. Thomas J. Harrigan, Mr. Thomas J. Morris and Mrs. Helen F. Lane.

The Commonwealth of Virginia is represented by the Commonwealth's Attorney of Arlington County, Virginia, Mr. William J. Hassan.

All these people are present in the Court Room.

I will ask the members of the panel if their answers to any question is No, they simply do not respond. But if you have an affirmative answer to a question, please raise your right hand so I can call on you and ask you questions.

Does any member of the jury panel have any relationship by blood or marriage or close personal acquaintance with the defendant, Mr. Patler, the attorneys, Mr. Hassan, Mr. Harrigan, Mr. Morris and Mrs. Lane, or with the alleged decedent, George Lincoln Rockwell?

All right. That is Mr. Burchard?

Voir Dire Prospective Juror: Yes, sir.

11/27/67 The Court: What is the nature of that?

page 13 } Prospective Juror: Sir, I know of that because I worked as a newspaper reporter on this case.

The Court: I think, Mr. Burchard, in view of the fact that you have worked as a newspaper reporter on the case your information about it is probably so close and personal that you knew more about it than the average juror would, and under the circumstances, I would excuse you, sir.

Thank you.

Would you call a name to replace Mr. Burchard?

(Whereupon prospective juror was sworn.)

The Court: Mr. Barber, I believe you raised your hand.

Prospective Juror: Yes, sir.

I'm a neighbor of Mrs. Lane, and I see her quite infrequently.

The Court: Do you know her socially?

Prospective Juror: No, sir.

The Court: So your only contact with her is in an infrequent meeting as a neighbor, is that correct.

Prospective Juror: Yes, sir.

The Court: All right.

Voir Dire 11/27/67 } Mr. Buchanan, did you hear the questions I pro-
page 14 } pounded to the panel?

Prospective Juror: Yes.

The Court: Have you an affirmative answer to that?

Prospective Juror: I don't know anyone.

The Court: All right.

Are any members of the panel regular clients of any of the attorneys whose names have been mentioned here, Mr. Hassan, Mr. Harrigan, Mr. Morris and Mrs. Lane?

(Whereupon there was no affirmative response.)

Are any of you related by blood or marriage or are close personal acquaintances of any persons whom you know to be witnesses in this case.

(No affirmative response noted.)

Does any member of this panel have any interest in the outcome of this case?

(No affirmative response noted.)

Has any member of this panel expressed any opinion concerning the probability of the guilt or innocence of the accused in this case?

(No affirmative response noted.)

Voir Dire 11/27/67 } Has any member of this panel formed any opinion based
page 15 } upon newspaper or other publicity or any conver-
sations you may have heard or any information or
communications which have come to you in any
way concerning the probability of the guilt or
the innocence of the accused in this case?

(No affirmative response noted.)

Has any member of this panel by reason of the political belief, social belief, religious belief or other beliefs or principles, any sensibility of any bias or prejudice that would affect you in arriving at a fair and impartial verdict in this case based solely on the law and the evidence?

You are Mr. Wolfe?

Prospective Juror: That's right.

I want it to be known that I have had very strong feelings about the organization of which the defendant was a member, and I would want that to be known before I participated.

The Court: Mr. Wolfe, what you have said is not quite an answer to my question, which is this:

Do any of the feelings that you have cause you to be biased or prejudiced so that in deciding the question of the guilt or innocence of the accused in this case you would be affected by those feelings and not objective, relying solely on the law and the evidence.

Prospective Juror: No, sir. As I understand your question and related to my views, the organization is Voir Dire not on trial here. It's the individual, and any of 11/27/67 the evidence that would come before me would be page 16 } treated on an objective basis as far as this case is concerned.

The Court: You would not have any prejudice against the accused or for him because of the feelings toward the organization of which he was allegedly a member?

Prospective Juror: No, sir. My viewpoint as far as he as an individual is concerned.

The Court: Do any other members of the panel have an affirmative answer to that question concerning bias or prejudice?

(No affirmative response noted.)

Do any members of the panel—I will preface the next question by a statement: The law in Virginia requires a jury if it should find a defendant guilty in a criminal case not only to decide the issue of his guilt or his innocence but also if they find him guilty to decide his punishment. That is the province of the jury and not of the Court. I further tell you that for a number of offenses the law of Virginia provides the death penalty as one of the possible options which the jury may apply in setting punishment for that offense.

In no cases that I know of is it mandatory. It's Voir Dire one of the punishments which a jury may inflict 11/27/67 and, on the other hand, if they find the defendant page 17 } guilty in such cases, they may inflict other punishments instead of that.

But having that fact or those facts in mind, I now ask you if any of you have any feelings or principles which would prohibit you from convicting a defendant of an offense which is punishable by the death penalty?

That is Mrs. Buchanan?

All right, Mrs. Buchanan, you may stand aside.

Call another juror.

(Whereupon prospective juror is sworn.)

The Court: Mr. Hightower, would you have given an affirmative, yes, answer to any of those questions?

Prospective Juror: I would.....

The Court: All right, sir. My questions were concerning any interest in the case, whether or not you have expressed or formed an opinion in the case, whether you have a bias or prejudice in the case and whether you have such feelings or convictions as would inhibit you from convicting a defendant, if warranted, by the evidence, of an offense punishable by death.

Now, is your answer yes to any of those?

Prospective Juror: Yes, sir.

Voir Dire 11/27/67 page 18 } The Court: All right, sir, to which question is your answer "yes."

Prospective Juror: The death punishment.

The Court: I beg your pardon.

Prospective Juror: Death punishment.

The Court: I take it your answer is "yes" that you would be inhibited from convicting a defendant of an offense punishable by death if warranted by the evidence?

Prospective Juror: Yes.

The Court: You may stand aside.

(Whereupon prospective juror is sworn.)

The Court: Mr. Sufit, did you hear and understand all of the questions that I heretofore addressed to the panel?

Prospective Juror: Yes, I did.

The Court: Would your answer to any of those questions be affirmative?

Prospective Juror: Yes.

The Court: And to which?

Prospective Juror: To your last question insofar as capital punishment is concerned.

The Court: All right, sir, you may stand aside.

(Whereupon prospective juror was sworn.)

The Court: Mr. Allison, did you hear and understand the

questions that I previously propounded to this
Voir Dire panel?

11/27/67 Prospective Juror: Yes, Your Honor.

page 19 } The Court: Would your answer to any of those
questions be in the affirmative?

Prospective Juror: Yes, Your Honor.

The Court: To which question?

Prospective Juror: Capital punishment.

The Court: All right, sir, you may stand aside.

(Whereupon prospective juror is sworn.)

Mr. Watts, did you hear and understand all of the ques-
tions which I previously propounded to this panel?

Prospective Juror: I did, sir.

The Court: Would your answer to any of those questions
be in the affirmative?

Prospective Juror: No, sir.

The Court: All right.

Ladies and gentlemen, were any of you present when the
Grand Jury was changed at this term of Court?

(No affirmative response noted.)

Do any of you know of any reason whatever which would
preclude you, inhibit you, or make it difficult for you to give
the accused and the Commonwealth a fair trial based en-
tirely on the law and the evidence in this case.

(No affirmative response noted.)

Voir Dire

11/27/67 I'll see counsel at the Bench.

page 20 } Mr. Hassan: I object to the question, Your
Honor, on capital punishment on the ground that
you asked "would they convict." You did not ask whether in
the proper case they would impose the death penalty. You left
that out.

The Court: I've raised it exactly in accordance with the
statue.

Mr. Hassan: You changed it when the second woman
came; you changed the wording so it now becomes a question
on the record.

The Court: The statute says "convict a defendant."

Mr. Hassan: The second time you asked about it, you asked

it along the same question but changed it from conviction to sentencing after you started getting a line of jurors.

The Court: I was unaware that I had. However, I can straighten it out on the record if there is any doubt about it.

Do you gentlemen have questions that you wish to propound to the panel?

Mr. Morris: We definitely have questions, Your Honor, a considerable amount of questions. We don't have Voir Dire them written up to proffer to the Court prior to 11/27/67 their being asked, but since there is some change page 21 } in the law since 1966 and now as a matter of right the defendant has a right to examine the jurors.

The Court: I propose to let you examine them directly, however, I want, first, to know what you're going to ask and rule upon it prior to having you ask, before it's asked. If the ruling is favored, you may ask it. I don't propose to ask all the questions.

Mr. Morris: The problem comes up that we would have one question maybe which would lead to a second question. We just can't visualize returning back and forth to the bench to get an answer to one question which leads to an obvious second question.

The Court: Well, we'll begin with the subject matter that you want to cover.

Mr. Harrigan: One thing we're going to do—On the last juror over there, this is a man where Mr. Morris represented his wife in a very highly contested divorce, so I don't want to embarrass him in front of the panel for anything like that, but as a matter of fact—

The Court: (Interposing) Is that right?

Are you in the process of suing him at this time?

Mr. Harrigan: There has been preliminary hearings on it and everything else, and there has been 11/27/67 some very strong language back and forth. page 22 }

The Court: I think that's grounds for discharge for cause. I wouldn't saddle you with a juror who has a relationship like that, so I'll excuse him.

While we're on that subject, have you, Mr. Hassan, any particular objection to make to any jurors based upon what has already passed?

Mr. Hassan: No. I don't think it's gone far enough. I think we need to know whether any of these people have contributed to or is a member of any Nazi party or other organization, whether or not they're White or Black Power advo-

cates, whether or not they're emotionally involved that conflicts with both the deceased or the defendant; and I don't think your questioning went far enough.

A lot of them may be of the Jewish religious faith, and if so, I think he would be bitterly interested in all those in the Nazi cause because there are activities against the Jewish race there.

Mr. Morris: And the Negro, too.

Mr. Hassan: I don't want to be jumping up to object to some of the questions, so what I'm going to have Voir Dire to do on an individual basis—

11/27/67 Mr. Harrigan: (Interposing) and in the presence
page 23 } of the whole panel.

Mr. Hassan: So my own questions might be embarrassing.

The Court: Do you want these questions as a basis for your pre-empt to strike, or are you interested in challenge for cause?

Mr. Hassan: For cause. I have no question which would go toward pre-emptory strike.

The Court: I think I should begin by excusing the man Mr. Morris is now suing and having another juror brought into his place before we go on with the questions.

Mr. Hassan: I'm going to ask the Court to swear two alternatives.

The Court: I intended to do that.

Mr. Oden'hal, I understand that you're involved in some litigation in which Mr. Morris is counsel. Is that right?

Prospective Juror: That's true.

The Court: I will allow you to stand aside.

Call another juror.

(Whereupon prospective juror was sworn.)

The Court: Mrs. Loving, were you able to hear Voir Dire and did you understand all the questions I pre-
11/27/67 viously asked of this panel?

page 24 } Prospective Juror: Yes, I did.

The Court: Would you have an affirmative answer to any of those questions?

Prospective Juror: No.

The Court: All right.

Gentlemen, I'll see you at the bench again.

Now, it doesn't make any difference to me which side goes first in the matter of *voir dire* examination.

Mr. Morris: Have you ruled on his original motion, or

are you going to reconsider his original motion to have the individual examination? We sincerely think, Your Honor, that it is a wise suggestion to the Court, and seeing where one said that they did not believe in capital punishment, the next four went along with it. We don't think the jurors understand the questions.

Mr. Harrigan: (Interposing) You ask them if they know the parties involved, and they don't even say that they know the parties involved, but they sit there looking up in the air.

The Court: Well, I asked him if he was a closely personal friend.

Voir Dire I think his answers were truthful.

11/27/67 Mr. Morris: We would re-move that motion at page 25 } this time, Your Honor.

The Court: I might reconsider it if the questioning proves it's justified. At this point, I don't see that it is.

Mr. Hassan, you go first with what you want to ask the panel.

Mr. Hassan: I intend to ask about the John Birch Society, the White Social Party and White Power Movement and I can't think of all the names of any singular organization whether it be for or against a particular stand of any routine organization, and I think that would be because I don't think the Ku Klux Klan cases we have would apply to a particular nature of this case. This defendant has been a member of that power, member of the White Power Party, and he also—I think that one question may lead to another.

The Court: It seems to me that membership in other organizations would not be pertinent.

Mr. Hassan: The defendant himself established the Kill Party, and I don't know the name of all of them in New York, and wrote publications in connection with them and attacked the colored and attacked the Jews and there are organizations which have been attacking the defendant and

Voir Dire the Nazi Party and I want an unemotional trial.

11/27/67 The Court: You may ask if they're members of page 26 } these organizations and you may ask if they're non-members and ask if they have such strong feelings towards those organizations if they would give bias or prejudice, but I don't believe because a man is a member of the John Birch or any other is directly connected—

Mr. Hassan: (Interposing.) I'm going to strike him because I think he should have been removed for cause.

Mr. Morris: I do, too.

Mr. Harrigan: He's already stated that he has strong

feelings, and I think he demonstrated some sort of bias by the mere fact that he has strong feelings, and whether or not it will affect him and I think that the bias is already there.

The Court: He stated that he had no bias concerning this individual.

Mr. Harrigan: He doesn't know who the witnesses are, yet.

Mr. Hassan: We knew there are going to be individuals on both sides mixed up with the same type of organization, I take it, and the defendant with members of what is known as the American Nazi Party, and a million other Voir Dire names.

11/27/67 The Court: Do you know what the names are?

page 27 } Mr. Hassan: Any name that would draw kind of contribution.

Mr. Harrigan: The Nationalist Socialist Party, for one.

Mr. Hassan: And anything that would bring in a dime's contribution were used.

The Court: Well, you may ask them if they are members of those parties or contributed to them.

Mr. Morris: Your Honor, would it not be wise and fair instead of guessing to strike Mr. Wolfe for cause?

The Court: I'll take that under advisement, and I would prefer the answer to this question.

Mr. Morris: It's peculiar to a jury—they never give an answer. They form an opinion—you asked them if they had formed an opinion or heard anything about the case and not one hand went up. It's quite obvious they heard about it.

The Court: I didn't ask if they had heard about the case.

Mr. Morris: I was under the impression you did.

The Court: No.

Mr. Harrigan: We'll want to know what their Voir Dire feelings are, for or against, the American Nazi Party.

11/27/67 page 28 } The Court: Well, I'll let Mr. Hassan go ahead with his questions.

He may ask if they're members or contributed to it.

Now, Mr. Hassan, what else do you want to cover?

Mr. Hassan: That's all I want to cover.

The Court: Go ahead.

Whereupon *Voir Dire* Examination of the Jury Panel Was Conducted by Counsel:

By Mr. Hassan:

Q. Ladies and gentlemen of the jury, are any member of

the jury, has any member of the jury, presently or in the past, been a member of the American Nazi Party?

(No affirmative response noted.)

Q. Any member of the jury contribute to the American Nazi Party?

(No affirmative response noted.)

Q. Anyone been a member of any organization or contributed to any organization that was devoted for or against the same principles that were followed by the American Nazi Party on one side or the other?

(No affirmative response noted.)

Mr. Hassan: No further questions, Your Honor.

Voir Dire The Court: All right.

11/27/67 Mr. Harrigan: We anticipate our examination is
page 29 } going to be rather lengthy, and we intend to take
each juror right down the line and ask certain
questions mainly as what newspaper he takes, what he's
read about the case—

The Court: (Interposing) I think you can start by assuming they knew something about the case, and it will just waste a lot of time which newspaper, which article and what date.

Mr. Harrigan: I'll ask the first question: How many read about this case in the newspaper and see how many raise their hands.

The Court: What do you propose to get from that?

Mr. Harrigan: I propose to get what information they've read about the case in newspapers and whether or not they've discussed the case and based on that, whether they formed any opinion regarding the case; secondly—

The Court: (Interposing) You've already covered that.

Mr. Harrigan: I don't think we have.

Maybe you've covered it to some extent but you haven't covered it to my mind the way I want it covered.

Mr. Morris: If Your Honor please, based on
Voir Dire what Mr. Hassan said, any member of the Nazi
11/27/67 Party, for or against—Mr. Wolfe sat idly by on
page 30 } that and we request he be removed for cause.

The Court: He didn't say he was a member.

Mr. Morris: He said he had feelings for or against and you might take that into account to show some bias.

Mr. Harrigan: We'll ask more questions regarding what his feelings are.

Mrs. Lane: I think for the same reason, based on that, we should also ask about his very strong feelings, not necessarily that he has contributed—

The Court: (Interposing) I don't believe, gentlemen, you're going to get a fair trial that way. If you go into the feelings about the Nazi Party, you'll never get a jury. You couldn't find an intelligent person who didn't have some feelings about an organization as notorious as that.

The question is whether it was against this defendant and whether they have such strong feelings which in any way would affect their consideration of this man's guilt or innocence.

You can easily see that Mr. Wolfe may be the kind of juror who would work extra hard to give him a fair trial.

Mr. Morris: This is true. He may, but why Voir Dire should we presume one way or the other.

11/27/67 The Court: The reason I don't think your ques-
page 31 } tion is proper to uncover this feeling, it has nothing to do with what they feel toward this man. Separate their feelings for the man for the organization. If they have no feelings for the man—

Mr. Harrigan: (Interposing) They don't even know the man. They have no feelings, but once they're on to certain facts that come out in the trial, that may change. They don't even know Patler, now, but if they find he was a member of the Nazi Party for four or five years and he was a Captain in the Party and he advocated against the Jewish race and advocated throwing the colored people back to Africa—

The Court: (Interposing) Do you anticipate that the speeches he made and the positions he took are evidence in this case?

Mr. Harrigan: I anticipate that they're common knowledge from the newspaper, because they have pictures of him in the newspapers standing on the platform with Rockwell.

The Court: If that is so, I will permit you to ask if they have any bias or prejudice for or against the defendant based upon public speeches he had made and positions he has taken publicly concerning the agencies of the
Voir Dire American Nazi Party, but not whether they have
11/27/67 bias or strong feelings concerning that Party it-
page 32 } self. Their bias or prejudice to be relevant in this case has to be against the defendant.

Mr. Harrigan: I was going to ask a foundation question and—

The Court: (Interposing) I think that widens it too much and would make it too difficult for us to get a fair jury.

I'll permit questions based upon things that he has done or positions he has made. You don't have to specify what those are. You just have to—

Mr. Morris: (Interposing) That's putting the burden on the defense, Your Honor, and—

The Court: (Interposing) Don't you think it has already been apparent that he has some connections with the Nazi Party?

Mr. Morris: Yes.

The Court: Don't you think it's sufficient to leave it at that, just ask by reason of his membership in that Party and the position he might have taken on behalf of that Party.

Mrs. Lane: That's the position he might have taken or inject that into the case, and I wouldn't inject it. Voir Dire I don't see where it's relevant whether he did or 11/27/67 did not commit the crime as charged. What you're page 33 } concerned about is whether the jury knows this through newspaper publicity because it relates to him personally not just the Party. If you don't want to ask it, just —

Mr. Harrigan: (Interposing) We intend to ask what they know regarding the publicity.

The Court: Concerning the defendant personally?

Mr. Harrigan: That's what we're concerned about.

The Court: I think it would be unwise for you to ask them specifically what they have read about it because that would affect the mind of everyone else present.

Mr. Harrigan: That's exactly why we wanted to ask them one at a time.

The Court: Why don't you start by asking whether they have heard any action prior to the trial and ask if they would prejudice them in any way.

Mr. Harrigan: All right.

Whereupon *Voir Dire* Examination of the Jury Panel Was Conducted by Counsel:

By Mr. Harrigan:

Q. Ladies and gentlemen, the first thing I would like to ask is some questions as to occupations on some of the Voir Dire jurors since the lists are a little bit fouled up. So

11/27/67 if I could, I would like to go down the list and ask
page 34 } a couple of questions about your occupations.

Mr. Uppercoe?

A. I'm a technician with the U. S. Geological Survey.

Q. Mr. Johnson?

A. I'm in the contracting business, asphalt pavement.

Q. Who do you work for, Mr. Johnson?

A. Alaska Paving Company.

Q. Are you a contractor or some sort of an engineer?

A. I'm Vice President of the company.

Q. Do you have an engineering background?

A. Yes, sir.

Q. Mrs. Horton:

A. Administrative Aid, retail store.

Q. What store is that?

A. Glebe Radio and Appliance.

Q. Mr. Peer?

A. Retired.

Q. What are you retired from?

A. Director Superintendent for the American Oil Company
and retired two years.

Q. And you were superintendent?

A. Terminal superintendent for American Oil
Voor Dire Company.

11/27/67 Q. Mr. Mack?

page 35 } A. Retired Army officer, now consultant to the
Research Analysis Corporation and the Logistic
Management Institute.

Q. What rank were you?

A. What?

Q. What rank were you?

A. General.

Q. Mrs. Phyllis Brayley?

A. Housewife.

Q. What does your husband do?

A. A printing salesman.

Q. Who does he work for?

A. Cooper-Trent.

Q. Mr. Clark?

A. I'm a projects engineer for the Computer Consulting
Company.

Q. Which company is that?

A. The Aero-Back Corporation.

Q. You say project engineer, what does that entail, what
type of work?

A. Well, we design computer specifications and
Voir Dire select the computing equipment and projects en-
11/27/67 gineering. I usually do that with a group of people.
page 36 } Q. I see.

Mrs. MacDougal?

A. Housewife.

Q. What does your husband do?

A. Self-employed.

Q. And?

A. (Continuing) Queens Sporting Goods.

Q. Did you serve on a jury here last term, also, a few weeks
ago?

A. Uh-hum. I came in late.

Q. What case was that, what kind of case?

Mr. Hassan: I object to that, Your Honor.

Mr. Harrigan: I think that's a proper question. I don't
see what he's objecting about.

The Court: Well, she has been on the jury panel through-
out this term of Court and probably served on a number of
cases. Is it your purpose to—you may ask the question.

Mr. Harrigan: What kind of case was that?

Prospective Juror: A boy altering a check.

Q. Mr. Watts?

A. Retired from the Navy Headquarters, photographic.

Q. That was a Civil Service job?

Voir Dire A. Civil Service, yes.

11/27/67 Q. Mr. Divant?

page 37 } A. Electrical Contractor for the Arlington
County Board.

Q. How long have you worked with the County?

A. Seventeen years.

Q. Do you know Mr. Hassan?

A. No.

Q. Mr. Newton?

A. Mechanical Engineer with the Post Office Department.

Q. What was the last phrase, sir?

A. With the Post Office Department.

Q. Is that here in Arlington?

A. Twelfth and Pennsylvania Avenue.

Q. Mr. Koski?

A. Civil Engineer, Naval facilities, Engineering Command.

Q. Mr. Dalvell?

A. International Department of Reactors, Career Consul-
tant.

Q. Are you an engineer or physicist?

A. Yes.

Voir Dire Q. Engineer?

11/27/67 A. Yes.

page 38 } Q. Mr. Wolfe?

A. Accountant, United States Department of Agriculture.

Q. Mr. Barber?

A. I'm chief of the Programs Analysis Division, Federal Highway Administration.

Q. Mrs. Webb?

A. Housewife.

Q. What does your husband do?

A. He's a retired Army officer.

Q. What rank was he?

A. Colonel.

Q. Mr. Elliott?

A. I am retired from service. I now put out a law list called the American Bar and International Bar.

Q. What rank were you?

A. Captain.

Q. Mr. Hayes?

A. Budget officer, U. S. Air Force.

Q. Mrs. Loving.

A. Retired Government employee; now I'm a homemaker.

Q. What unit?

Voir Dire A. G. S. A.

11/27/67 Q. G. S. A.?

page 39 } A. Yes.

Q. What does your husband do, Mrs Loving?

A. He's deceased.

The Court: Excuse me, Mr. Harrigan.

Captain Elliott, are you a lawyer?

A. No, sir.

The Court: All right.

Prospective Juror: I was a loan officer.

The Court: Go ahead, Mr. Harrigan.

Mr. Harrigan: All right.

I would like to ask the members of the jury, do you now parttime or have you in the past worked for the Arlington County Police Department, Federal Bureau of Investigation or any other law enforcement agency?

(No affirmative response noted.)

Or the ladies on the jury, have your husbands worked for law enforcement agencies or your sons or close immediate family?

(No affirmative response noted.)

Have any of the members of the jury ever had a relative, close relative, that's been a victim of a homicide Voir Dire or any other crime?

11/27/67 (No affirmative response noted.)

page 40 } Do any of the members of the jury have any reservations about the rule of law which requires you to presume a defendant is innocent until proven guilty?

Mr. Hassan: Objection, Your Honor. As a matter of law, that's an instruction of the court and is not to be given by counsel.

Mr. Harrigan: If they have any reservations, this is the time to find out about it, not when instructions are given.

The Court: The objection is overruled.

Mr. Hassan: Exception, please.

Mr. Harrigan: Did you all hear the question?

Do any of you have any reservations about the rule of law that the government has to prove their case beyond a reasonable doubt?

Mr. Hassan: Exception, Your Honor. The same ground as the previous one. They're not proper questions in this jurisdiction. I don't know where they came from, but they don't come from Virginia.

The Court: Overruled.

Mr. Harrigan: Once again, did you hear the question?

All right. Now, have any of the members of the jury read about this particular case in the newspapers?

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page 41 } (Whereupon entire panel, with exception of one individual, indicated affirmative.)

Mr. Harrigan: May we approach the bench, Your Honor?

The Court: I don't think it's necessary. I believe we discussed that phase of the case already.

Mr. Harrigan: I intend to pursue this particular phase.

The Court: Well, I believe it's impossible, It would be impossible to find a jury in this jurisdiction that has not read something about it in the newspapers. I asked them before did that produce any prejudice in their mind. You may ques-

tion on that point, but not what newspaper or what date or anything.

Mr. Harrigan: I would like to ask whether they read more than one article.

The Court: I don't think that's productive, Mr. Harrigan.

Mr. Harrigan: Exception.

How many raised their hands on that?

Now, Mr. Uppercoe, did you have an occasion to Voir Dire discuss this case or the facts of it with anyone as 11/27/67 a result of radio, newspaper or TV commentary?
page 42 }

Prospective Juror: I probably did with my family before I knew anything about being on jury duty. I can't remember specific instances of it, but I'm sure I must have.

The Court: Mr. Harrigan, it might save time if you asked all jurors, collectively, that question and then if you're going to pursue it, select those jurors who raised their hands rather than go through each juror.

Mr. Harrigan: I think, Your Honor, the reason I do it this way, I know it's more time consuming, but I think you get more response talking to the individual than you would get to go just around the panel itself.

The Court: You may talk to the individual, but I have already asked the panel if they had expressed an opinion about the case and they have all told me they have not.

Now, if you want to ask if they discussed the case, I would suggest instead of going through the entire twenty, you restrict your individual questions to those who raised their hands.

Mr. Harrigan: All right.

I'll ask the whole panel, those who read about the case in the newspaper, heard comments over the radio and TV, how many of you have had occasion to discuss these facts you heard about with other people or your immediate family?

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page 43 } (Whereupon six affirmative responses were noted.)

Mr. Harrigan: That would be Mr. Uppercoe, Mr. Johnson; Mrs. Horton, I take it you didn't raise your hand; Mr. Peer.

Now, Mr. Uppercoe, you said you discussed it with your family?

Prospective Juror: Yes, that's right.

Q. And during your discussions with your family, did you, for example, mention any opinion that you had regarding this particular case?

Mr. Hassan: I'm going to object, Your Honor. You already asked that question.

The Court: That objection is sustained.

Mr. Harrigan: Exception.

Based on the facts which you received through the newspaper, radio and TV, did you come to any opinion at all regarding this particular case?

Prospective Juror: No, I don't think I did.

Mr. Hassan: Objection, Your Honor.

The Court: That objection is sustained as well. I asked those things already, Mr. Harrigan.

Voir Dire Mr. Harrigan: All right.

11/27/67 I don't think your Honor asked them whether
page 44 } they had heard about it, read about it in newspapers or heard about it on the TV; you asked if they formed an opinion.

The Court: I asked if they formed an opinion. It's true I did not ask specifically whether they had read about it in a newspaper.

Mr. Harrigan: Then I was going to ask the other members of the panel. I take it the objection would be sustained.

The Court: Yes, it would.

Mr. Harrigan: I except to the ruling.

Mr. Johnson, Mr. Brailey, Mrs. Jackson, Mr. Watt, Mr. Newcomb and Mr. Elliott.

Now, how many members of the jury were familiar with the political belief of the Nazi Party, what are the aims of the Party, what it advocated—

Prospective Juror: (Interposing) It's a hate organization.

Mr. Harrigan: I beg your pardon.

Prospective Juror: It's a hate organization.

Mr. Harrigan: Now you're Mr. Jackson, is that correct?

Prospective Juror: (Nodding affirmative.)

Voir Dire Q. Mr. Jackson, I take it you were aware that
11/27/67 the Party was a white supremacy party?

page 45 } Prospective Juror: (Nodding affirmative.)

Q. Now would the fact if the evidence disclosed that this defendant was a member of that particular party, would this influence your opinion as to this particular individual.

A. No, sir.

Q. Would you tend to give other people's testimony, police officers' testimony, more weight than possibly you would the defendant's.

Mr. Hassan: I'm going to object to that, Your Honor, because the question of the weight is an individual question, an impression that each individual witness makes.

Mr. Harrigan: I think it's a proper question.

The Court: I think it's a proper question.

Objection overruled.

Mr. Harrigan: I would like to state my further objection. There may be no prejudice against two witnesses and one may be given considerable more weight than others, and you have got to give equal weight to what each one says, and I want that on the record.

The Court: I think the question is probably not Voir Dire broad enough, and counsel is entitled to ask them 11/27/67 if they would discredit the testimony of any witness solely on that ground.

I'll ask that of the panel. Would any of you ladies and gentlemen disregard or discredit the testimony of a witness in the case on the basis of any connection of that witness with this Party which has been mentioned?

(Whereupon no affirmative responses noted.)

Does that cover your point, Mr. Harrigan?

Mr. Harrigan: It covers it to some extent.

I take it the answer is "no."

Prospective Juror: Uh-hum. (Affirmative)

Q. Now, Mr. Wolfe, you indicated that you had strong feelings against the American Nazi Party.

The Court: He didn't say against them. He said he had strong feelings concerning that Nazi Party.

Mr. Harrigan: I will ask you this: do you have a strong feeling against them?

The Court: That's not proper, either. The Party is not on trial. The question would be whatever his feelings might be toward the defendant in this case, and I asked that and his answer was "no."

Mr. Harrigan: I think that's right, Your Honor, Voir Dire but I think I have a right to pursue this, and the 11/27/67 evidence will *develope* that this man was in the Party—

The Court: (Interposing) All right, you may

pursue that, but it's limited to this defendant and not the Party in general.

Mr. Hassan: If Your Honor please, I'm going to object to it being so limited because I know there have been witnesses called on both sides who likewise are members of the Party.

The Court: That's why I asked the previous question. down.

The Court: He's entitled to it, to find out the feelings toward this defendant, but not toward the Nazi Party.

Mr. Harrigan: I except to that ruling.

The Court: All right, sir.

Mr. Harrigan: Now, Mr. Wolfe, perhaps I didn't phrase it right, but do you have strong feelings against the American Nazi Party?

The Court: I'm not going to let you ask that question,

Mr. Harrigan: I'm interested and you should be Voir Dire interested in only what his feelings are towards 11/27/67 Mr. Patler and whatever his feelings, whatever they page 48 } might be, toward that Party would interfere with his objective toward the defendant in this case, because if you start this chain, you would be entitled to ask each juror his personal beliefs in great detail, and I don't think that has anything to do with the case.

Mr. Harrigan: Because of the nature of this particular case and the fact that it does involve the American Nazi Party, there will be testimony from many witnesses from that particular Party, and I think we have a right to explore whether the members of the jury feel that people that belong to that particular organization are, have a right to belong there, or whether they are all a little nutty for even belonging or just how they feel about individuals who join this Party and whether or not it affects them either way.

The Court: I think it's been covered solely upon the ground that none of them gave affirmative answers to that.

Mr. Wolfe has already been asked if he has strong feelings concerning that Party that would affect this defendant, but I don't think it goes to the extent of permitting you to ask about the personal beliefs of the jurors, politically, religiously or otherwise.

11/27/67 Mr. Hassan: If Your Honor please, may we page 49 } have a recess?

The Court: All right.

(Whereupon a short recess was had.)

The Court: Mr. Hassan, do you have witnesses who you held for testimony today?

Mr. Hassan: Yes. Mr. Hancock, Mr. Hall and Mr. Ballard.

The Court: Bring them in.

(Whereupon witnesses were sworn.)

The Court: Mr. Ballard, Mr. Hancock and Mr. Hall, it's becoming apparent that we're not going to reach your testimony in this case today, so I will excuse you until 10:00 o'clock tomorrow morning.

You're now witnesses and recognized to appear at 10:00 o'clock tomorrow morning. Until that time, remain outside the Court Room.

You are not to discuss this case with anyone at all between now and the time you testify except that you may if you wish to, speak to the Commonwealth Attorney and the defense attorney. You don't have to talk to them if you don't want to. You may talk to them if you wish, but you Voir Dire may not talk to anyone else about this case, and I 11/27/67 will ask that you stay away from any publicity page 50 { about this case tonight.

Do not listen to the radio, television etc. concerning this case.

Mr. Hassan: Just to make sure—I want to make sure this is Jack Hampton Hall.

Mr. Hall: Right.

The Court: All right, gentlemen, you are excused until 10:00 o'clock tomorrow morning.

Mr. Harrigan, go ahead.

Mr. Harrigan: Mr. Jackson, you mentioned before that it was your opinion that the American Nazi Party preached hate. Would the fact that the defendant was, at one time, a member of that Party affect your decision in any way, or would this belief that they did preach hate influence you in any way in deciding this case?

Prospective Juror: No sir.

Q. In your opinion it would not?

Prospective Juror: No.

Q. Do you belong to the NAACP?

A. Yes.

Q. Do you subscribe to the NAACP?

A. Yes.

Voir Dire Q. Didn't the NAACP fight against the Nazi 11/27/67 Party and members of the Nazi Party financially page 51 { otherwise?

Mr. Hassan: I'm going to object to that.

Mr. Harrigan: May we approach the bench?

The Court: All right.

Mr. Hassan: I think this is sufficient reason to remove him for cause.

Mr. Morris: We also suggest that the same applies to Mrs. Loving.

Mr. Hassan: What?

Mr. Morris: Mrs. Loving is also a—

The Court: (Interposing) I wouldn't excuse one on the ground that they're Negroes.

Mr. Morris: Neither would I.

The Court: Well, you haven't established that.

Mr. Harrigan: The man already said in his opinion they preached hate.

The Court: I'll excuse him for cause on the basis of the membership in the NAACP, but if you can discharge Mrs. Loving, you'll have to have some questions asked.

Mr. Harrigan: All right.

I also move to strike Mr. Wolfe for cause because based on his prior statement that he had strong feelings Voir Dire against the American Nazi Party and that John 11/27/67 Patler was a member of that Party for a long time, page 52 } and I think it does show a prejudice toward the organization that he belonged to, and even though he said it wouldn't influence him, I think it's obvious the prejudice is there against the organization and strong enough for him to be prejudiced against Mr. Patler.

Mr. Hassan: He hasn't added a single thing to what has already been said, and that was overruled.

Mr. Morris: I think the Court said he would consider that.

The Court: I have that under advisement.

I'll wait.

Mr. Jackson, because of your membership in that organization, I'm going to excuse you to stand aside and not because either counsel or I doubt the objectivity that you have and not because of answers you have expressed in your questions, but the membership in the organization might possibly embarrass you and make this particularly difficult for you, and for that reason you are excused.

(Whereupon prospective juror is sworn.)

The Court: Mr. Taylor, have you heard and understood the questions which have already been propounded Voir Dire to this panel?

11/27/67 Prospective Juror: Yes, sir.

page 53 } The Court: Would your answer to any of those questions have been affirmative?

Prospective Juror: No, sir.

The Court: All right.

Do counsel wish to examine Mr. Taylor especially at this point or just go ahead with your general questions?

Mr. Hassan: I have no questions. He heard my questions already.

The Court: All right.

Mr. Harrigan: I don't remember all the questions that were asked myself at this point, so if I repeat—I would like to go over a few of them, Your Honor.

The Court: Go Ahead.

Mr. Harrigan: Now, Mr. Taylor, you're an engineer. Is that right?

Prospective Juror: And a Certified Public Accountant.

Q. And whom do you work for?

A. Internal Revenue Service.

Q. Now, did you hear the question regarding whether you have read in the newspapers or heard over the radio and television any facts concerning this particular case?

11/27/67 page 54 } Prospective Juror: Yes, sir.

Q. And did you have an occasion to discuss these facts or form an opinion as to the facts that you heard or read?

A. I'm sure I discussed this case with my wife for one, but I don't think—I have not formed an opinion.

Q. Would the knowledge that you have of these facts at this time be such as to influence you in your opinion of this case at all?

A. No, sir.

Q. Now, based upon the understanding that you have of the facts in this case, do you believe it would take some evidence to change any opinion that you may have in this case.

Mr. Hassan: I object to that. Your Honor, as being too vague and unrealistic.

The Court: The objection is sustained. Someone would have to testify first to prejudice him in order to answer that question.

Mr. Harrigan: All right.

Now, Mrs. Loving, do you belong to the NAACP?

Prospective Juror: I did last year.

Voir Dire 11/27/67 Mr. Harrigan. Your Honor, I have the same challenge that I have on Mr. Jackson.

page 55 } The Court: Well, I'll see you at the bench.

Evidently, she was a member last year. She could not have been a member at the time this event occurred, and

Mr. Morris: (Interposing) Let's find out when she quit.

The Court: I think you would have to.

Mr. Harrigan. I would say that we can introduce records, but it's apparent that I think only a very short time ago she belonged to an organization which as anti American Nazi Party and merely the fact that she got out whenever she did, a few months ago, is attest as to whether she is biased or not. The fact is she belonged to an organization which advocated against the American Nazi Party.

The Court: Against? I don't think strong feelings against the American Nazi Party add up to anything against the defendant in this case. After all, the decedent was a member, too, leader of it, and the questions have to be relevant to the defendant.

You can excuse a man for cause who was an active member at the time of trial which has actual conflict, sympathy because of his day-to-day association, to function
Voir Dire 11/27/67 as an impartial juror, not his personal integrity.
page 56 } But someone who has been a member—I think you would have to ask more questions before I could rule on it.

Mr. Harrigan: All right. Note my exception.

Mrs. Loving, you say you're not a member at this time?

Prospective Juror: My membership run out I think it was in June.

Q. Of this year?

A. Yes.

Q. And did you quit the organization or just—

A. (Interposing) I just didn't renew my membership.

Q. You didn't renew your membership?

A. No.

Q. Do you intend to renew it?

A. So far I haven't.

Q. Do you intend to renew it?

A. Well, no.

Q. You do not?

A. No.

Q. Well, the fact that the evidence discloses that the defendant was a member of the Nazi Party—strike that.

Are you familiar with the American Nazi Party?

Voir Dire A. No. I don't know anything about it. Only
11/27/67 by hearing the name of it, that's all I know.

page 57 } Q. Would the fact this defendant was a member
of that Party influence you in any way concerning
the guilt or innocence of the defendant?

A. No. No more than if he had a reason or cause to do
what he did.

Q. I beg your pardon.

A. No more than if he had a reason or cause to do it, you
know, reason to do something like that.

Q. Have you heard anything on the radio or read any-
thing in the newspaper concerning any reason or cause?

A. Yes, but I don't remember what it was.

Q. Did you form an opinion whether there was a reason
or cause?

A. No.

Q. Would the fact that Mr. Patler belonged to a white
supremacy organization influence you against Mr. Patler?

A. No. Not at all.

Q. Not at all?

A. No.

Mr. Harrigan: I would renew my objection, if
Voir Dire Your Honor please.

11/27/67 The Court: I'll see you at the bench.

page 58 } Would you read back the prospective juror's
last questions and answers about her opinion?

(Whereupon reporter read back:

"Q. Would the fact this defendant was a member of that
Party influence you in any way concerning the guilt or inno-
cence of the defendant?"

"A. No. No more than if he had a reason or cause to do
what he did."

"Q. I beg your pardon."

"A. No more than if he had a reason or cause to do it, you
know, reason to do something like that."

The Court: I don't know whether she meant exactly what
she said, but I'm not willing to take a chance because it
sounds to me as though she has formed an opinion, so I will
excuse her, not for cause, but because counsel has asked it.

Mrs. Loving, I'll also ask you to stand aside.

Call another juror, please.

(Whereupon prospective juror is sworn.)

The Court: Mr. White, have you heard and understood the questions that have already been asked of this Voir Dire panel?

11/27/67 Prospective Juror: I have.

page 59 } The Court: Would your answers to any of those questions have been affirmative?

Prospective Juror: No., but I'm a member of the NAACP.

Q. You're a member of it now, Mr. White?

A. Yes, sir.

The Court: I'll have to excuse you for the same reason.

(Whereupon prospective juror was sworn.)

The Court: Mr. Mitchell, have you heard and understood the questions asked of the panel?

Prospective Juror: Yes I have.

Q. Would your answers to any of those questions have been affirmative?

A. No, they would not.

The Court: All right, gentlemen.

Mr. Hassan: No questions.

Mr. Harrigan: Do you believe in capital punishment?

The Court: Now that's not the question I asked.

Mr. Harrigan: There's been about seven questions asked, and I think it's almost impossible for everyone to remember each question asked. I don't remember every question that I asked, and I have asked them.

Mr. Hassan: But you haven't asked any about that.

The Court: I will ask that question of Mr. Mitchell.

Mr. Mitchell, are your opinions such as to prevent you from convicting anyone of an offense which is punishable with death, if you should find such action warranted by the evidence in the case?

Prospective Juror: No.

The Court: All right, sir.

Mr. Harrigan: What is your occupation?

A. I'm a wholesale grocery representative.

Q. Who do you work for?

A. Consolidated Foods Corporation.

Q. Mr. Mitchell, were you aware of the existence of George Lincoln Rockwell prior to this alleged shooting?

A. I knew he existed, yes.

Q. And would the fact the defendant, Mr. Patler, here the fact that he was a member of the American Nazi Party at one time influence your decision in this case in any way?

A. Not a bit. I'm sure it wouldn't.

Q. You're sure?

Voir Dire A. It would not.

11/27/67 Q. Did you hear any of the facts of this particular case over the radio or TV or in the newspaper?

A. I have heard some, yes.

Q. Have you had discussions about this case with anyone?

A. I would say no. If any at all, I don't think so.

Q. And have you formed any opinion at all regarding the facts you heard in this case?

A. No.

Mr. Harrigan: Now, I would like to ask Mr. Wolfe a couple of more questions, if Your Honor please.

The Court: Go ahead.

Mr. Harrigan:

Q. Mr. Wolfe, you have stated that—I don't recall your exact words, so correct me if I'm wrong, that you were adverse to the policies of the American Nazi Party?

The Court: He didn't say that, Mr. Harrigan. He said he had strong feelings concerning the American Nazi Party.

Mr. Harrigan: I'll rephrase it.

Do you have some feelings concerning the American Nazi Party.

Voir Dire A. That's right.

11/27/67 Q. Any particular reason you have for those strong feelings?

Mr. Hassan: I object to that, Your Honor.

The Court: Objection sustained.

I'm not interested in his views about Parties or religious views or the reason for his views. I'm interested in his views toward the defendant, and you can ask about that.

Mr. Harrigan: All right. I'll except to that.

Those strong feelings that you have, would you not rather set on this case?

Mr. Hassan: Objection.

The Court: The objection is sustained.

I assume most jurors would rather not sit on a case. It's their duty and their preference, of course, is not involved.

Mr. Harrigan: Do you feel those feelings would enter into your decision in any way whatsoever?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Now, Mr. MacCruder, you were a General
Voir Dire in the Army?

11/27/67 A. Yes.

page 63 } Q. Did you have any strong feelings against
the members of the American Nazi Party or the
American Nazi Party?

A. No.

Mr. Hassan: I'm going to object to that, Your Honor.

The Court: That objection is sustained.

Mr. Harrigan: Now, during your experience, did you have any experiences of any type of general court martial?

A. Yes.

Q. And were you usually on the Board or were you a prosecutor, defender.

A. One time I was defense counsel, another time I had been a member of the Court.

Q. And at other times were you prosecutor, also?

A. No.

Q. Never a prosecutor?

A. No.

Mr. Harrigan: I'd like to ask one other question, Your Honor.

The Court: All right.

Voir Dire Show it to Mr. Hassan.

11/27/67 Mr. Hassan: I think it's quite obvious. I ob-
page 64 } ject to it, Your Honor.

The Court: Objection sustained.

Mr. Harrigan: I would like to read it in the record.

The Court: Just have him copy it down.

"Are each of you in such a fair and impartial state of mind that you would be satisfied to have a jury possessing such a mental state to judge the evidence if you were on trial here."

Mr. Hassan: That's all the questions I have, Your Honor.

Mr. Harrigan: That's all the questions I have, Your Honor. I do have a motion to make.

The Court: Do you wish to renew your motion?

Mr. Harrigan: I have several motions.

First one is that we would renew the motion on Mr. Wolfe to discharge him for cause based on his own statement.

The second motion I have is we would move to discharge for cause all of the individuals who raised their hands and said they had read about this case and knew **Voir Dire** about it from the newspaper, including Mr. Upper-11/27/67 coe, Mr. Johnson, Mrs. Phyllis Bradey, Mrs. Mac-
page 65 { Dougall and I believe Mr. Watt, Mr. Walter New-
domb and Mr. Morris Mitchell, Mr. Richard Elliott and Mr. W. H. Wolfe, again.

Mr. Hassan: Do you want to hear me?

He never asked anybody about TV, he just didn't add TV—

The Court: (Interposing) I will deny both motions. I think the other questions directed toward Mr. Wolfe both generally with the rest of the panel and to him individually left no doubt in my mind about the prejudice toward the defendant or against him. He happens to be one juror who volunteered that he had strong feelings about the Nazi Party. I would imagine most intelligent men who read newspapers have feelings one way or the other. It's apparent the Court has satisfied itself with great care that that feeling does not spill over or attach to the defendant in this case and that I endeavored to do it, because I think that's the real point in the case and not the feeling toward a political Party or an organization. And with more force, the same reasoning goes to the denial of the motion to excuse those jurors for cause who read about the case in the newspapers. It would be almost impossible to find a jury anywhere in the **Voir Dire** United States where the case was published in 11/27/67 **Time Magazine** and certainly it has been publi-
page 66 { cized here.

The best that can be done is to find a jury free of prejudice, and I think the examination of the panel has established that beyond any question.

Both motions are denied.

Mr. Harrigan: I except to the Court's ruling on both motions and once again except to the Court's ruling on all the other questions and refusing to allow us to go into the American Nazi Party itself.

The Court: All right.

Mr. Harrigan: And for the other reasons on the record.

The Court: Counsel ready to exercise their strikes?

Proceed to strike.

Gentlemen, I propose to go ahead now and select alternate jurors, but I would ask you to waive one statutory requirement which I don't believe to be jurisdictional. As I read the statute, I think it's 19.1-2, 16. This jury must be sworn before the alternate jurors are selected.

The reason I would prefer not to do that and go ahead and select the alternate jurors and that is to allow them to separate for two hours to go home and pack their Voir Dire bags and just admonish them not to discuss the 11/27/67 case or let themselves be exposed to any communication about it and then let them come back here and all will be sworn and put in the Sheriff's custody.

Do y'all have any comment?

Mr. Morris: If your Honor please, I would prefer the Court follow the general rule and would rather those that are members of a particular jury be sworn and be sure the Sheriff's office can—

The Court: (Interposing) Well, if you object, I won't do it.

Mr. Hassan: Then, in that eventuality, I move that we recess until tomorrow morning at 10:00 o'clock and the statute provides that you can't separate the jury once they're sworn, so we should just recess now.

Mr. Harrigan: We object to that. Besides, the panel has been selected.

Mr. Hassan: The statute says if you continued to the point of swearing them in.

Mr. Morris: I wish he would talk more quietly (Referring to Commonwealth's Attorney)

The Court: I think there is a section in the statute which I have looked at, and it says it was not error to let Voir Dire the jury separate before the jury was sworn, and 11/27/67 I think I probably have the power to do it, but I page 68 } don't want to do it if Mr. Morris objects to it.

You take exception to the jury separating?

Mr. Morris: It's not that we feel that way about it, but we would just as soon that those people contact respective houses and have them bring their bags over all at once.

The Court: In view of your objection, I'm not going to send them home. I do think, though, what has been done in all other cases is to let them call home as long as a deputy is with them, and they can tell their wives to pack a bag. They're going to be locked up for a long time.

Mr. Hassan: I think they should be unsworn and be able

to telephone anybody, and then we can call them back and have them questioned.

The Court: Would your objection be removed if I tell them not only not to discuss it with their wives and I'll ask them whether or not this has been done—

Mr. Harrigan: (Interposing) I think you should send a Police Officer with them.

Mr. Hassan: That's the Sheriff's job. The Police Officer's can't handle the jurors.

Voir Dire Mr. Harrigan: Then he knows they're not going 11/27/67 to talk to them, that's possible. We could get it page 69 } that way. They could go with a group of five or so and go from one house to another. There's been certain things in the newspaper, and I'm sure the wives have read in the past couple of days—

The Court: (Interposing) The matter will be heavily publicized this evening, I suppose. I don't particularly want them to go home and spend the night, so I think we should just send them home and give them an instruction not to read their newspapers or anything but to come back here and give them a deadline of about 6:00 o'clock to do that.

We will turn them over to the Sheriff at that time.

In view of the defendant's objection, I will not let them separate, then. As far as swearing them is concerned, even if they go home in the custody of the Sheriff that would be a separating which should not take place after they're sworn, so even that procedure will be—if you gentlemen will waive their swearing for purposes of selecting alternate jurors so we can deal with those alternates and regular jurors at the same time, we can go with that.

Mr. Harrigan: Just as long as somebody is watching them.

Voir Dire

11/27/67

page 70 } (Whereupon two alternate jurors were sworn.)

The Court: Ladies and gentlemen of the jury, the Virginia law provides that when a case appears to be one which might go on for some time, the Court may select alternate jurors who remain with the jury right up until the time it retires to consider its verdict. If, for any reason any one of the jury, the regular jury, is not able to go into consideration of the verdict at the end of the case, an alternate juror may be selected by lot to take his place.

For that purpose I now ask you the questions that have already been asked of the other jurors.

Would any of you have affirmative answers to give to any of the questions that were asked?

You're Mr. Suttle?

Prospective Juror: Yes, sir.

I think he asked if any relatives were in the Police Department.

The Court: I don't recall.

Prospective Juror: I have a brother-in-law in the Police Department.

Voir Dire The Court: What Police Department.

11/27/67 Prospective Juror: Arlington County.

page 71 } The Court: You have a brother-in-law in the Police Department. What is his name.

Prospective Juror: Daniel Harvey.

The Court: All right, Mr. Suttle. Would the fact that you have a relative with the Arlington County Police give you any bias or prejudice or in any way make it difficult or embarrassing for you to serve as a part of this jury and influence you in any way in giving the defendant a fair trial based on the law and the evidence?

Prospective Juror: It probably would.

(Whereupon prospective juror is sworn.)

The Court: Mr. Coglan? Is that the way you pronounce it?

Prospective Juror: Yes, sir.

Q. Have you heard the questions propounded to the panel up to this point?

A. Yes, I have.

Q. Would you have an affirmative answer to any of those questions, Mr. Coglan?

A. No.

Q. All right. Do counsel wish to examine?

Voir Dire Mr. Hassan: I have no questions.

11/27/67 Mr. Harrigan: Are you retired, sir?

page 72 } A. Yes, sir.

Q. From where?

A. American Telephone and Telegraph.

Q. Mrs. Steele, what do you do, M'am?

Prospective Juror: What is my name?

Q. What do you do?

A. I'm a homemaker.

Q. A Housewife?

A. Yes.

Q. What does your husband do?

A. He's retired now. He was an air navigation specialist with the Oceanographic Survey.

Q. Are you retired?

A. Yes.

Q. From what?

A. Government.

Q. Mr. Reese, what do you do, sir?

A. I'm a special assistant to the Department, Assistant Secretary to the Communications Department of the Department of Commerce.

Q. And Mr. Coffman you work at the bank?

Voir Dire A. Bank officer.

11/27/67 Q. What bank is that?

page 73 } A. Union Trust.

Q. Now did you hear the other questions that were propounded concerning the fact that if the evidence discloses that Mr. Patler was at one time a member of the American Nazi Party, would that affect your decision in this case in any way?

(No affirmative response noted.)

Q. Have any of you heard anything on the radio, TV, or anything in the newspapers about this case?

A. A long time ago, I did.

Q. All right. You all read something a long time ago?

Based on what you heard or read, did you form any opinion concerning this particular case?

Prospective Juror: No.

Prospective Juror: No.

Prospective Juror: No.

Q. Has this case been discussed in your presence by any of the members of the panel?

(No affirmative response noted.)

Q. Have you discussed it with your husband?

Voir Dire A. Yes.

11/27/67 Q. Did he form an opinion which he indicated to
page 74 } you?

A. I don't remember distinctly. I mean at the time we talked about it, when we read it in the papers when it happened, but I don't remember any distinctive opinion.

Q. You don't remember him having given his opinion to you?

A. No. I mean just as you discuss any problem that comes up in the paper, that's all.

The Court: All right, gentlemen, each may exercise one strike.

Now let those officers who will have charge of the jury now be sworn.

(Whereupon the officers were sworn.)

Do counsel have any objection to alternate jurors sitting in the box?

Mr. Harrigan: No objection to that, but I have objection to the report that I would like to put on the record.

The Court: The statute provides they sit in the box only if they are called to serve, but because of the physical layout of this Court Room, if counsel have no objection, I would like them to take up the two seats in the jury box which Voir Dire are left over for that purpose.

11/27/67 Mr. Harrigan: No objection.

page 75 } I would have the same objection to all four alternate jurors because they were selected and they all heard about the case and knew the facts and discussed it with spouses, and so forth, and therefore I would challenge all four of them for cause.

The Court: Objection is overruled.

Mr. Harrigan: Exception.

Mr. Morris: As on the previous grounds stated.

The Court: All members of the jury panel not selected as jurors are now excused until 10:00 o'clock tomorrow morning.

Ladies and gentlemen of the jury, both jurors and alternate jurors. In cases of this kind, it is provided by law that you be kept together and free from any extraneous influences until the case is decided.

I grant this is going to impose a great burden upon you, but it's one of the public services that people are called on to perform rather seldom, and it is, of course, a very serious one.

Now the immediate consequences of it as far as you are concerned are that we will let you go to your Voir Dire homes in small groups in the custody of one or
11/27/67 more Deputy Sheriffs to pick up your belongings.
page 76 } If you wish, we can make arrangements so you can telephone your homes before you leave here

so your wife or husband, as the case may be, someone at your home may pack your bag and get the things ready.

I anticipate that you're going to be involved probably throughout the coming weekend and the next week. Of course, you will undoubtedly run out of clothing and have to send home for replenishment. We will make arrangements through the Sheriff for the keys to your automobile and things of that kind to be sent home so that your families may have them, and at any time that it is necessary for you to communicate with the outside world, that can be done through the Sheriff's office. Arrangements can be made for you to make telephone calls, but you will not be permitted to read newspapers, magazines or listen to the radio or television. You may, however, have other reading matter which is not news as long as they aren't law books. I will ask the Sheriff to censor your reading matter to insure it's not conceivable that it will have a bearing on this case.

You will not be sworn until you return here because technically if you were sworn, it would be impossible for you to separate even for the purpose of going home to Voir Dire pick up your belongings.

11/27/67 We will recess this case to give you an opportunity to go home in small groups and be back after 6:00 o'clock. We'll reopen the Court solely for the purpose of swearing you as a jury and then commit you to the custody of the Sheriff so he can take you in charge for the night.

You will be given food and lodging at the expense of the Commonwealth of Virginia until the case is decided.

From the point that you are sworn on you will not be allowed to separate or really be out of the Sheriff's custody except to retire to your separate quarters for the night.

The Court will instruct you at this time and these instructions carry throughout the case, thus they will apply particularly during that period of time before you are sworn and permitted to go home and that is that you must not discuss this case with anyone nor permit yourselves to receive any information or communication concerning this case in any form, oral or written, and that you must not permit the case to be discussed in your presence; that you must not listen to any radio or television broadcasts; or read any newspapers or any magazine or any other correspondence of information which might conceivably convey information concerning the case to you.

11/27/67 Obviously, you're going to be asked by your

page 78 } spouse, and children and others what has happened to you, and it's perfectly all right for you to tell them that you've been impaneled as a jury for this case, but that's about as far as you can go.

Don't allow yourselves to be drawn into any discussions in the case about what is the fact or what occurred here today for that matter. If any of you are in the course of going home with the Deputy and have to go past the scene where this occurrence allegedly occurred, don't make any inspection of it. Go directly to your home.

Your consideration of this case from now on must be limited to the facts which are presented to you from the witness stand and the instructions of the Court which will be given to you at the proper time. If you have any questions about this matter, I'll be glad to answer them now or if they occur to you later, I will answer them after conferring with counsel. The Sheriff's office will cooperate with you to the fullest extent.

All right, the jury is now in the custody of the Sheriff and are permitted to go home in such numbers as the Sheriff finds convenient.

(Whereupon a recess was had.)

(Whereupon roll call of the jury.)

Voir Dire

11/27/67

page 79 } The Court: Members of the jury, have any of you received any information or communication concerning this case or facts in this case since we recessed the Court.

(No affirmative response noted.)

The Court: All right. Let the jury be sworn.

(Whereupon the jury was sworn with the exception of alternate jurors.)

The Court: Now, let all alternate jurors be sworn.

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Robert Hancock

page 346 }

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The Court: Mr. Hassan, you may call your first witness.
Mr. Hassan: Robert Hancock.

Whereupon, ROBERT HANCOCK, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and address?

A. Robert Grant Hancock, 506 North Madison Street, Arlington, Virginia.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when you had page 347 } occasion to see George Lincoln Rockwell?

A. Yes sir.

Q. And where was that?

A. He was coming to the Washateria, our laundromat to wash his clothes.

Q. Were you in the laundry?

A. Yes I was.

Q. What were you doing there at that time?

A. I was fixing machines.

Q. And what did Mr. Rockwell do when he came in?

A. Well, I was down behind the machines. He just put his clothes in and that's the last time I saw him because I got down behind the machines.

Q. And did there come a time when he left the launddro-mat?

A. Yes sir.

Q. And do you know what time of the day or night this was?

A. I guess it was afternoon, about 1:00 o'clock, 12:00 or somewhere through there.

Q. About 1:00 o'clock?

A. Somewhere through there, yes sir.

Q. How long had you been working in the laundromat?

A. I had been in there several hours trying page 348 } to fix certain machines.

Robert Hancock

Q. And when Mr. Rockwell left, did you see him leave?

A. No sir, I didn't see him leave.

Q. Did you see him when he was outside?

A. Yes sir.

Q. Where did he go when you saw him outside?

A. Well, I didn't see him when he was directly outside. I saw him just before he was killed.

Q. Where did you see him before he was killed?

A. In his car.

Q. At his car?

A. Right.

Q. And did you observe or hear anything unusual when you saw him at his car?

A. With the machines going, I didn't hear anything. I was inside. I just got up to clean my hands and the machines were going so I didn't hear him.

Q. What did you see, if anything?

A. I saw the hole in the windshield and I saw Mr. Rockwell dive out through the side.

Q. You saw the hole in the windshield?

A. Yes sir.

Q. And you saw him do what?

page 349 } A. I saw him go out the side of the car when the car rolled forward and his feet were still in the car.

Mr. Morris: I'm sorry, I can't hear the witness. Please answer closer to the mike.

Mr. Hassan: He saw the car roll forward and it pulled him out and his feet were inside the car.

Mr. Morris: He's leading the witness.

The Court: He's just repeating the testimony. That's what I understood him to say.

By Mr. Hassan:

Q. And then did there come a time when you went outside the laundromat?

A. Yes, after a few minutes I did go outside.

Q. Where did you go when you went out?

A. I went over to Mr. Rockwell. He had a hole in his chest.

Q. Where was he at this time?

A. He was laying on the street on the parking lot.

Robert Hancock

Q. On which side?

A. It was on the right side.

Q. Pardon me?

A. On the—

Q. (Interposing.) On the right side of his car?
page 350 } A. Yes.

Q. What did you do, if anything?

A. My father went to call the police and I was just standing there. I didn't know what to do.

Q. Did you observe any other activity around the car at that time?

A. Other than people running up, no.

Q. Did you know any of these people?

A. Well, several people from the Washateria I had seen around.

Q. Several people that were in the what?

A. Well, we have several customers and I had seen several of the customers there.

Q. Did you know George Lincoln Rockwell before that day?

A. Yes sir.

Q. For how long?

A. I had been up to the place several times and had talked to him several times in the Washateria itself.

Mr. Hassan: No further questions.

The Court: Cross examination?

CROSS EXAMINATION

By Mr. Harrigan:

Q. How old are you, Mr. Hancock?
page 351 } A. Seventeen.

Q. Seventeen.

Do you go to school?

A. Yes sir.

Q. Where?

A. Wakefield High School.

Q. All right.

Now what day of the week was this?

A. Gee, I'm not sure what day it was.

Q. All right.

Now, you say you were inside when you saw Mr. Rockwell walk in?

James Ballard

A. Yes sir.

Q. And then you saw him leave?

A. Yes.

Q. What time did you say you saw him leave?

A. Well, I was working on the machines for four or five hours but actually I guess it was around 12:00 or 1:00 o'clock. I'm not sure. I didn't keep track of the time that well.

Q. You're guessing on the time, is that right?

A. Yes.

Q. Now, Mr. Hassan asked had you seen Mr. Rockwell before?

A. Yes sir.

page 352 } Q. How many times before in the laundromat?

A. Well, I'd seen him two or three times in the laundromat itself.

Q. Over a period of how long?

A. Oh gee, well, I'd say two or three months.

Q. You saw him two or three times in two or three months, is that right?

A. Yes sir.

Q. And was it the same day of the week that you saw him every time or don't you know?

A. I'm not sure it was the same day or not.

Q. Was it the same hour of the day when you saw him or did it vary?

A. It varied.

Mr. Harrigan: That's all. No further questions.

The Court: Mr. Hassan?

Mr. Hassan: No further questions.

The Court: May this witness be excused?

Mr. Hassan: He may be excused.

The Court: You're excused and free to go.

Whereupon, JAMES BALLARD, was called as a witness on behalf of the Commonwealth, and having been
page 353 } previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

James Ballard

A. James Ballard, 1419 Chapin Street, Washington, D.C.

Q. Now, Mr. Ballard, where is your place of employment?

A. Elite Laundry, 2119 Fourteenth Street, N.W.

Q. What is the nature of your occupation?

A. Relief man, delivering laundry and doing maintenance work.

The Court: I didn't understand the latter. Delivering laundry and doing what?

The Witness: Maintenance work and cleaning at the stores.

By Mr. Hassan:

Q. Directing your attention to on or about the 25th day of August 1967, did you have an occasion to drive your truck to the six thousand block of Wilson Boulevard?

A. I did.

Q. And what was the purpose of going there at that time, Mr. Ballard?

A. To clean the store.

page 354 } Q. To clean the store?

A. Yes sir.

Q. And what is the address of that store?

A. Sixty—I'm not sure of the four numbers.

Q. What?

A. I'm not sure of the number of the store.

Q. You're not sure of the numbers?

A. No.

Q. Do you know the name of the shopping center?

A. I think it's called Wilson Shopping Center.

Q. Were you there that day—do you know what time it was?

A. Around eleven when I got there.

Q. And did anything unusual occur while you were there?

A. Yes.

Q. Will you tell the Court and the Jury what occurred and what you saw?

A. What occurred was, a man got shot there and what I saw was a man lying on the ground when I came back to the front.

Q. Did there come a time when you heard anything?

A. Someone on the roof which I thought was children.

Q. And did you see the man that was shot before he was on the ground?

page 355 }

James Ballard

A. Yes.

Q. And tell us what you observed from the time you heard the man on the roof until the man was on the ground.

A. What I observed from the time I heard the noise on the roof until the man was on the ground?

When I came back to the front of the building the man who was shot was at the back of his car and was pointing up in the direction of the roof and then he collapsed.

Q. Was he outside of his car at this time?

A. Yes.

Q. And what did he do when he pointed, if anything?

A. Held his hand up near his collar bone and then he collapsed.

Q. How did he point?

A. He motioned like this with this hand like this.

Q. Which side of his car was he on?

A. The right.

Q. On the right hand side of his car?

A. Right.

Q. And when you saw this, where were you?

A. Standing in the front of the store, you know, looking through the glass.

page 356 } Q. Did there come a time when you went out of the store?

A. Yes, shortly after.

Q. What did you do then?

A. Stood there and looked.

Q. Did there come a time when you went around to the far side of the car?

A. Yes, I passed by it.

Q. You passed by it?

A. Um hmm (nodding affirmative.)

Q. Where was your truck parked with relation to the car?

A. Just opposite to his car on the far end of the parking lot.

Q. How soon after the man collapsed did you go out of the store?

A. Maybe about two minutes.

Q. Maybe about two minutes?

A. (nodding affirmative.)

Q. Was anyone else out there at that time?

A. Two men from the barbershop was standing there in the front of the shop, and other people began coming up to approach the car.

James Ballard

page 357 } Q. Do you know any of these people?
A. Who was there?
Q. Yes. Who came up to approach the car?
A. Just the two barbers.
Q. Just the two barbers.
Do you know their names?
A. I don't know them by name.
Q. And do you know what time it was when you heard the
running on the roof?
A. Maybe it was about 11:20.

Mr. Harrigan: Excuse me. I didn't hear you.
Mr. Hassan: He said 11:20.
Mr. Harrigan: 11:20.
Mr. Hassan: No further questions of this witness, Your
Honor.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Mr. Ballard, what time did you arrive down at the six
thousand block of Wilson Boulevard?

A. About 11:00 o'clock.

Q. And I understand that you went down in there to clean
out one of the stores?

A. That's right.

Q. One of the vacant stores?

page 358 } A. No, one of the Elite Laundry stores.

Q. One of the Elite Laundry stores.

All right. Now, were you in the store from 11:00 o'clock
until you saw this man that had been shot?

A. That's right.

Q. Now, you know what time it was that—strike that.
Did you hear any shots?

A. Yes.

Q. How many?

A. Two.

Q. What time was it when you heard those shots, do you
know?

A. Not directly to the minute.

Q. Well, do you have any idea?

A. I got there about 11:00 o'clock. I don't think I should
answer that. I'm not sure.

Q. All right.

James Ballard

Did you mention something about 11:20 in your direct examination?

A. Yes.

Q. What was that?

A. Did I mention?

I said I heard some footsteps on the roof.

page 359 } Q. O.K.

So did you hear those footsteps around 11:20?

A. To my estimate that's about what time it was.

Q. Now after you heard those footsteps at what you said was 11:20, what did you think about them, what did you think?

A. Probably thought it was some kids or maintenance men up there doing something.

Q. So you didn't pay any attention to whatever it was at that time?

A. Right.

Q. (Continuing.) Is that right?

A. Right.

Q. Now, in relation to the other stores in that building, where is the Elite Laundry store?

A. The farthest one south joining the Seven Eleven.

Q. Now, I take it then the Seven Eleven is on the end?

A. Right.

Q. (Continuing.) Is that right.

A. There's a construction building that comes up with the Elite but the entrance to the Seven Eleven is around the corner.

Q. And the Elite Laundry store then would be next to the Seven Eleven?

page 360 } A. Right.

Q. All right.

Now, you say that you saw a man fall out of a car?

A. No, I didn't say I saw him fall out.

Q. What did you say?

A. I said I saw him at the rear end of his car at the time he collapsed.

Q. At the rear end of his car?

A. Yes, just about back to the rear fender.

Q. Was there a car ahead of him then? Did the car roll ahead of him?

A. I don't know whether the car rolled ahead or not. The car was sitting still and he was at the rear end.

James Ballard

Q. Where you were looking from the inside of the Elite Laundry shop?

A. Right.

Q. Was he lying on the side of the car facing you or was he lying on the opposite side of the car, with the car in between Rockwell and you?

A. When he finally went down, the car was almost in between us.

Q. All right.

When you say almost in between—

page 361 } A. (Continuing.) Well, I could see. I had a plain view from the back to the rear of the car. I mean the car wasn't blocking my view from seeing him.

Q. It wasn't blocking your view, that's your testimony?

A. Yes.

Q. His feet, obviously then, were out of the car?

A. Yes sir.

Q. Now, how many footsteps did you hear about 11:20 on the roof?

A. I didn't pay any attention to that. I just noticed some footsteps over and up over from where I was standing inside the store.

Mr. Harrigan: That's all.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Mr. Ballard, did you hear these footsteps before or after you heard the shots?

A. Both times.

Q. Both before and after?

A. Yes.

Mr. Hassan: No further questions.

The Court: Any further cross?

RECROSS EXAMINATION

page 362 } By Mr. Harrigan:

Q. Now, you said you heard the footsteps both before and after you heard the shots?

A. Right.

Q. Right.

Now, the ones you heard before the shots, did you hear

Jack Hampton Hall

them just one time or did you hear them more than once during the course of the time you were there?

A. You mean?

Q. Before the shots?

A. Well, I'll just say once. That's the only time I paid much attention to it until after the shots. I just happened to hear somebody on the roof.

Q. Now, how many minutes after you arrived there did you first hear these footsteps?

A. About eight minutes.

Q. Eight minutes after you arrived at the shop?

A. Yes.

Course, I stopped at the front of the shop to speak to the lady who run the shop and then I proceeded to the back.

Q. And about eight minutes after—and what time did you arrive?

A. Around 11:00 o'clock.

page 363 } Q. All right.

So would you say with some degree of certainty that you heard footsteps between 11:00 and 11:30 on that roof?

A. Would I say that I heard the footsteps between 11:00 and 11:30?

Q. (nodding affirmative.)

A. Yes.

Mr. Harrigan: That's all.

The Court: All right, sir, you're excused and free to go.

Whereupon, JACK HAMPTON HALL, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. Jack Hampton Hall, 5741 North Fourth Street, Arlington.

Q. Now, directing your attention to on or about
page 364 } the 25th day of August, 1967, did there come a
time when you had an occasion to be at the six
thousand block of Wilson Boulevard in Arlington County,
Virginia?

Jack Hampton Hall

A. Yes sir.

Q. What time of the day or night was that, sir?

A. About noon.

Q. And what were you doing there at that time?

A. Washing clothes.

Q. Did there come a time when you saw George Lincoln Rockwell?

A. Yes sir.

Q. And would you tell us what you saw George Lincoln Rockwell doing, if anything?

A. Well, I was in the laundromat and saw him drive up. He came in the laundromat.

I walked out and up next door to the Elite cleaners and sat down talking to the ladies there and he walked up the street to the Seven Eleven, bought a paper, and came back, got in his car, and started to back out.

Q. Did you see him get in his car?

A. Yes sir.

Q. Would you describe what he did when he got in his car?

A. He got in his car and picked up his pipe
page 365 } and stuck it in his mouth before he started the
car up.

Q. And then what happened, if anything, that you observed?

A. He started backing out and I heard a shot. I thought it was the car that backfired, then I heard another and I saw his car start driving forward and then I ran out of the building then towards the car.

Q. Did you at that time see George Lincoln Rockwell?

A. Well, I went down on the other side of his car. I saw him lying in the street.

Q. On the other side of his car?

A. Yes sir.

Q. Did you know who he was prior to this time?

A. Yes sir.

Q. And then what did you do, if anything?

A. Well, I just stood and looked at him and Mr. Hancock and I were the first two there. I guess he came over and felt his pulse and ran back and called the police and the rescue squad.

Q. Then what happened, if anything?

A. We stood around there a few minutes before the rescue squad got there and that was all.

Dr. John H. Judson

page 366 } Mr. Hassan: I have no further questions of
this witness.

CROSS EXAMINATION

By Mr. Harrigan:

Q. You said you knew George Lincoln Rockwell, is that right?

A. Yes sir.

Q. Where did you know him from?

A. I've been in Arlington about seven years. I've seen him different places before.

Q. All right.

How often—you were doing your laundry?

A. Yes sir.

Q. How often do you go down there?

A. Just about once a week.

Q. How many times have you seen Rockwell doing his laundry there?

A. I can't recall seeing him there before.

Q. Never?

A. No.

Mr. Harrigan: Thank you. That's all.

The Court: May the witness be excused?

Mr. Hassan: He may be excused.

page 367 } Whereupon, DR. JOHN H. JUDSON, was
called as a witness on behalf of the Common-
wealth, and having been duly sworn was examined and testi-
fied as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupa-
tion

A. John H. Judson, physician, medical examiner, Arlington, Virginia.

Q. And how long have you been a medical examiner in Arlington, Virginia, Doctor?

A. Approximately seventeen years.

Q. And did there come a time on the 25th day of August, 1967 when you responded to the scene at the six thousand block of Wilson Boulevard?

Dr. John H. Judson

A. Yes sir.

Q. When you responded there, sir, what did you see, if anything?

A. I saw the body of the deceased lying in the parking lot in front of the 6021 Wilson Boulevard.

Q. Did you know him, sir?

A. No sir.

page 368 } Q. Did you not know him at that time?

A. I did not know him at that time.

Q. What did you do at that time, sir?

A. I examined the body. I determined that it was the body of George Lincoln Rockwell and I pulled a piece, apparently brass shell casing, off of the body that was imbedded in the body in the front of the chest wall and gave it to one of the detectives.

Mr. Morris: Your Honor, I wonder if Dr. Judson could testify without the use of that paper. If he cannot, we'll let him go ahead and testify from it. The appropriate way is to testify from what he knows.

The Witness: I may need to refer to it for subsequent questions.

Mr. Morris: That's all right. We just want to make objection based on the fact if he needs the paper—

The Court: (Interposing.) Doctor, do you need to refer to the notes in order to testify?

The Witness: I will probably need to refer to the notes for subsequent questions.

The Court: All right.

Mr. Hassan: If Your Honor please, so there will be no further necessity to go into that type of objection—

page 369 } By Mr. Hassan:

Q. —I will ask you whether or not you, under the law, sir, whether or not you made a medical coroner's report and will ask you to examine that and tell me whether or not that's your report as a medical examiner?

A. Yes I did under the law. This is a copy of it and the other I have here is the original copy of it.

Q. And is the original copy executed by the chief medical examiner as is the copy I have shown you?

A. The original copy was executed by me and it was reported to the chief medical examiner. This copy is a copy received from the office.

Dr. John H. Judson

Q. From his office?

A. Yes sir.

Q. And that is your report?

A. That is a copy of my report.

Q. Yes sir.

Mr. Hassan: I would like to have this marked for identification, Your Honor, as a Commonwealth's exhibit.

The Court: I would suggest we start a new series. This would be one.

(Whereupon, Commonwealth's Exhibit 1 was page 370 } marked for identification.)

Mr. Hassan: Commonwealth's Exhibit 1 for identification. Now, if Your Honor please, I offer this in evidence under the statute as Commonwealth's Exhibit No. 1.

The Court: Is there objection?

Mr. Morris: No objection.

The Court: It will be received and marked in evidence as Commonwealth's Exhibit 1.

(Whereupon, Commonwealth's Exhibit No. 1, Coroner's Report was entered into evidence.)

By Mr. Hassan:

Q. Now, Dr. Judson, what time did you arrive at the scene?

A. May I refer to the report?

Q. You may refer to the exhibit.

A. At 12:20 p.m.

Q. And did you immediately examine the scene and the body?

A. Yes sir.

Q. Please describe the scene.

A. The body was lying on the parking lot. page 371 } There was a car nearby with multiple holes in the front windshield, the left side of the front windshield. The deceased was lying with his shirt on. I opened his shirt and pulled his undershirt up to examine the wound.

After I made the examination—first I determined that he was deceased and then I ordered that the body be removed to the morgue at Arlington Hospital for an autopsy.

Dr. John H. Judson

Q. In your examination of the body at the scene, how many wounds if any did you find, sir?

A. I made a superficial examination at that time and found one gunshot wound at the second left rib space two inches to the left of the midline penetrating into the chest and I found also the wound that was made by the projectile of the bullet casing that I handed to one of the detectives.

I found numerous superficial skin wounds on the front of the chest and the abdomen.

Q. Now, sir, as a result of this examination, did you make a determination as to the cause of death?

A. Yes. I determined that death was caused by a gunshot wound.

Q. And as a result of your physical examination of the deceased and of the vehicle, did you have an opinion as to the direction of the trajectory that entered the
page 372 } wound you observed.

A. Yes sir. It entered from the front.

Q. And did it enter from above or below the body?

A. I did not make a determination at that time as to the direction.

Q. And did you attend the autopsy?

A. I attended part of the autopsy.

Q. Do you have an opinion at this time as to the direction of the wound?

A. Yes sir, that the—

Mr. Harrigan: (Interposing.) Your Honor, I think that a better foundation should be laid. He attended part of the autopsy. He was there and determined that. I think a foundation should be laid first. I would like to know what his opinion is based on, whether it's based on first hand knowledge or what somebody told him.

The Court: The objection is sustained.

Mr. Hassan: I believe my question has been misrepresented.

My question was, as a result of his observations at the autopsy did he have an opinion, based on his observations at the scene and observations later.

The Court: First, I did not understand you to
page 373 } say on what his observation was based and I think you should ask that.

Mr. Hassan: He has testified that he did observe a portion of the autopsy.

Dr. John H. Judson

By Mr. Hassan:

Q. On the basis of your examination at the scene and what you observed at the autopsy, Dr. Judson, do you have an opinion as to the direction the trajectory passed through in entering into the body?

Mr. Harrigan: I have the same objection, Your Honor.

The Court: Now, specifically, Mr. Harrigan, what is your objection? Is it that he did not state exactly what physical facts he observed at the autopsy?

Mr. Harrigan: If he observed facts at the autopsy, that would lead him to an opinion. He merely has testified that he was there during part of the autopsy which says practically nothing and if he observed something which gave him an opinion at that, I have no objection to that. But I would like to know if he's talking from first hand knowledge or whether he's talking from an opinion which he discussed with other doctors who obviously did the autopsy. He did not do it.

Mr. Hassan: I think the objection is untimely, page 374 } Your Honor. He has been asked if he has an opinion under the facts and he's entitled to state whether or not he has an opinion and then go into the basis of it.

The Court: It seems to me in order for him to be able to give an opinion, he would have to testify whether he had an observation rather than hearsay. At this point, we know he attended part of the autopsy and not what he saw. You may inquire as to the basis for his opinion and then ask for his opinion.

Mr. Hassan: I have asked Your Honor, if he has one and I don't know whether he's got one or not.

I think the advice of the Court and the objection of Mr. Harrigan is untimely.

The Court: You may ask him if he has an opinion.

Doctor, you may answer. Do you or do you not have an opinion as to the trajectory of the bullet?

The Witness: I have an opinion that it entered from above.

Mr. Morris: That's not responsive.

The Court: That's not the question. It has been stricken and the Jury is instructed to disregard it and the answer received that he has an opinion.

Go ahead, Mr. Hassan.

Dr. John H. Judson

page 374 } By Mr. Hassan:

Q. What is this opinion based on?

A. It's based on the report of the autopsy, a copy of which I have here.

Q. When you left the autopsy, did you have an opinion before the report was written?

A. I don't recall sir.

Mr. Hassan: No further questions of Dr. Judson.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Did you fill out this report, Doctor?

A. Yes sir.

Q. Sir?

A. Yes sir.

Q. Now, calling your attention to this, Commonwealth's Exhibit No. 1, you have certain information down here among which is the category, injury or illness and you have the date August 25, 1967 and you have the time at 11:58. Did you fill that in?

A. Yes sir.

Q. All right.

So when you say injury or illness, does that refer to the moment that he was shot?

page 375 } A. Yes sir.

Q. (Continuing.) Mr. Rockwell?

A. Yes sir.

Q. (Continuing.) Is that right?

And then you have a category here, last seen alive at 12:02.

A. Yes sir.

Q. Does that mean he presumably lived four minutes from the time he was shot until—

A. (Interposing) That was my estimate.

Q. All right.

Now, this particular shot that hit him, where did it hit him?

A. About two inches to the left of the midline, the upper front chest.

Q. All right.

And that would put the bullet where? Right through the aorta? Is that where it would go?

A. It would depend upon the direction that the bullet went.

Q. I see.

William F. Enos

Where did the bullet go?

A. May I refer to the autopsy report?

page 376 } Mr. Hassan: If Your Honor please, he was
not present for the autopsy and we're going to
have Dr. Enos and Dr. Beyer who performed the autopsy
here.

Mr. Harrigan: I withdraw that then.

By Mr. Harrigan:

Q. In any event, Doctor, to the best of your knowledge and
your official report, the shooting took place at 11:58, is that
right?

A. Yes sir.

Mr. Harrigan: That's all. Thank you.

The Court: May I see the report, Doctor?

The Witness: This is a copy. I have the original.

The Court: May the witness be excused, Mr. Hassan?

Mr. Hassan: He may.

The Court: Doctor, you're free to go. Thank you.

(Whereupon, at 12:30 p.m., the hearing was recessed, to re-
convene at 1:30 p.m.)

page 377 } AFTERNOON SESSION

(1:30 p.m.)

The Court: Call the Jury.

All right, Mr. Hassan.

Mr. Hassan: Dr. Enos.

Whereupon, WILLIAM F. ENOS, was called as a witness
on behalf of the Commonwealth, and having been duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your occupation?

A. William F. Enos, Pathologist, Northern Virginia Doc-
tors Hospital and forensic pathologist, designate, of the
Commonwealth of Virginia.

Q. Where did you receive your education, Doctor?

William F. Enos

A. Dartmouth College, College of Medicine, Bridgeport, Connecticut, residence training, and the Armed Forces.

Q. And during the course of your training and subsequent thereto, have you performed autopsies?

A. I have.

Q. And have you any special qualifications or associations that qualify you as a pathologist to perform autopsies?

A. I'm certified in anatomical, clinical and forensic pathology.

Q. During how long have you been practicing pathology?

A. Since 1948.

Q. And during that period of time, have you testified in any Courts?

A. I have.

Q. And do you have any idea as to how many times?

A. Well, hundreds of times. I can't give you a specific figure.

Q. And have you testified as an expert?

A. I have.

Q. Now, directing your attention to on or about the 25th day of August, 1967, did there come a time when you performed an autopsy on the body of George Lincoln Rockwell?

A. I did.

Q. And in performing this autopsy were you assisted by anyone?

A. Dr. Beyer and Dr. Dolan assisted me with this autopsy.

Q. And were there any other persons present at the autopsy or parts thereof?

A. Detective Sergeant Kodel of the Arlington Police Force identified the body and also present were Detective Schoup of the Police Department.

page 379 } Q. And was anyone else present for any portion of the autopsy?

A. I believe Dr. Judson was present for awhile. As I mentioned, also Dr. Dolan.

Q. Now, Doctor, as a result of your autopsy, would you tell us what you discovered and describe your procedures?

A. First I will give you the cause of death which was designated as a penetrating gunshot wound on the left anterior thorax which is this area here and one wound tract involved the aorta which is the major vessel coming from the heart and the antrium cable is the main vein coming to the heart. This bullet stuck in the hemopericardium and that is

William F. Enos

why blood was in the pericardial sack. This is a sack which holds the heart and the blood in the thorax.

Q. Now, as a result of your autopsy, did there come a time when you formed an opinion as to the direction of the bullet that caused these two wounds?

A. In studying the wounds of entrance, they were both penetrating. That is the bullets went in and did not come out. In studying the character of these penetrating entrance wounds and then studying the defects in the windshield and also having knowledge as to some testimony of witnesses at the time the gunshots were fired, we can assume page 380 { fairly accurately that the missiles came from a direction left and above the deceased. The important aspect here is that we have a fixed point, the fixed point being the holes in the windshield, you see.

Mr. Harrigan: Your Honor, for the record, Dr. Enos keeps talking about "we". When he says "we", can we assume—is he referring to us in the Court Room or someone else that assisted.

The Witness: I'm referring to Dr. Beyer and—

Mr. Harrigan: (Interposing.) All right. I wish he would testify as to his opinion and not Dr. Beyer's.

The Court: Doctor, tell us only as to your own opinion.

The Witness: O.K. Shall I repeat what I just said?

The Court: No, that's not necessary.

By Mr. Hassan:

Q. Now, did you find in the course of your autopsy any other cause or probably cause of death other than the penetrating wounds?

A. No.

Q. Now, did there come a time when you made slides of our autopsy?

A. This is a routine procedure and we undergo this.

page 381 { Mr. Morris: Why don't he be responsive to the question? Did he make slides, yes or no? He made slides, fine.

Mr. Hassan: He said it's a routine procedure. He did.

Mr. Morris: You didn't ask if he made it as a routine procedure.

The Court: He had not and the objection is overruled.

The Witness: Yes, we did make slides.

William F. Enos

By Mr. Hassan:

Q. That's a routine procedure?

A. Yes it is.

Q. You have those slides with you?

A. We do.

Q. I would like to have you show those slides and explain them to the Jury.

The Court: Is there objection?

Mr. Harrigan: Yes, Your Honor.

Mr. Morris: Yes, Your Honor.

The Court: Have you had an opportunity to examine the slides he proposes to show?

Mr. Morris: No, Your Honor.

page 382 } Mr. Harrigan: No, Your Honor.

The Court: Counsel, will you show them the slides?

Mr. Morris: We would have an additional objection too, if Your Honor please.

The Court: All right.

Let the Jury retire.

(Whereupon, the Jury was retired to the Jury Room.)

The Court: Do you want to see the slides before you state your objection, gentlemen, or do you wish to argue now?

Mr. Harrigan: I'd like to look at them first,

We have one other objection prior to that.

The Court: Do you want to state it before you look at them?

Mr. Harrigan: In view of the Doctor's testimony of his examination and his opinion based on his examination, I think the slides would be nothing more than cumulative and further, I believe, the slides, if they're normal slides, the only thing they will portray is a very bloody scene brought about by the autopsy which I think has no probative value and our objection would be that they would be prejudicial to the accused and of such little probative value that
page 383 } the prejudicial showing of these films would be the main basis of our objection.

The Court: Do you contend, Mr. Harrigan, that any picture of the body of the deceased, bloody or otherwise, would be inadmissible or just that it would be inadmissible if it were rendered shocking by the autopsy rather than by the gunshots?

William F. Enos

Mr. Harrigan: No. I do not contend any picture of the body would be inadmissible that portrays injuries afflicted but here we're not portraying injuries afflicted; it's the autopsy.

The Court: Well, I don't think I can rule until I see them. Let's look at them and I'll take it up then.

Mr. Hassan: Before you take the Motion, I hope you're going to allow the Commonwealth an opportunity to reply to Defense.

The Court: I will, Mr. Hassan, but right now I think it's premature.

Mr. Hassan: I don't. A ruling on the record before I'm heard would be—

The Court: (Interposing.) This first picture depicts the deceased for identification.

Now, Doctor, was that picture taken before or page 384 } after the autopsy?

The Witness: This is the external examination of the body.

The Court: All right.

The Witness: This depicts the body prior to taking the clothes off showing four holes in the shirt.

Can you see those (indicating)?

The closer view, again, of the four holes; one, two, three, and four, more detailed.

Mr. Harrigan: Excuse me.

The last was closer?

The Witness: Yes.

This shows an overall view of the thorax and four wounds again corresponding to the holes in the shirt and T-shirt; one, two, three, and four.

Now, the upper one, you notice, is guttered again. This is called under-cutting or guttered and indicates the missile came from the left as it entered the thorax.

The other missile wounds do not have that characteristic.

Again, (indicating) more detailed, showing the size of the wound and so forth.

Again, (indicating) emphasizing the guttering space of the upper wound which is, incidentally, the entrance page 385 } of the wound which gutted the aorta which caused his demise.

More detailed, again, (indicating) demonstrating very clearly the guttering, the under-cutting of the skin, you see.

William F. Enos

This is a detailed picture of the lethal wound.

This is a more detailed picture of the small four wounds. Number one: the first we showed; number two and number three and number four. There's one missile wound in number three. I would have to go—to number three—the missile entered in and was picked up along the heart. This was not a lethal wound. This is a—the picture of the internal aspects of the body on your right and left are the lungs and this yellow area is the aorta and you can see the defects, the laceration of the heart caused by the missile.

The lower part here is the heart. In other words, the missile traverses the aorta from the heart causing obviously complete disruption of the blood flow from the brain into the heart itself.

This shows the small wounds which are on the thorax which I failed to point out but these small wounds on the hand were caused by glass fragments which entered the skin. These fragments absorbed the entrance of the bullets as they passed through the windshield and actually entered the
page 386 } skin of the thorax and the hand and face.

I believe that's the last one.

Mr. Harrigan: Is that a total of eleven?

The Witness: I didn't count them. Wait a minute, I'll tell you. Yes, eleven.

Mr. Harrigan: O. K.

The Court: Doctor, were all the pictures that showed the exterior of the body only taken before the body was opened for autopsy?

The Witness: That's correct. Yes sir.

The Court: Doctor, you may resume the witness stand.

Gentlemen, do you wish to ask him any questions before you state your objections and my ruling to be made?

Mr. Harrigan: No, we have no questions for him at this time.

The Court: All right.

Mr. Hassan, do you wish to examine him further before we take up the legal questions here.

Mr. Hassan: I don't think it would be necessary to examine him regarding the slides.

Mr. Harrigan: Apparently, there's eleven pictures that he has testified to basically on what the slides show. He has an autopsy report which he performed which in-
page 387 } dicates exactly what happened and, I believe, there is a picture on that report—

William F. Enos

The Witness: (Interposing.) Diagram, yes.

Mr. Harrigan: (Continuing) Diagrams which indicate where the bullets entered the body and a complete report of the damage they did.

Now, the pictures indicate, number one, the face of Rockwell. Well, there's no contention here that that autopsy that he's talking about was not Rockwell so it's just cumulative and it shows the face of a dead man with no apparent injuries except some blood splattered on the face.

Two, shows merely a bloody shirt where he bled on the shirt which is merely a bloody scene of the victim which I do not believe has any probative value in this particular case and cannot help the Jury decide one way or the other or resolve any issue in this case except that he was shot through the chest. I think the autopsy report and the coroner's report show that.

Three, is nothing more than a closer view of number two which is certainly cumulative if you concede to at all.

Four, is even a closer view of two so you have three shots there that are nothing more than three shots of the same thing at a little closer angle. All three shows is
page 388 } a bloody shirt.

Five, is a picture of the chest without the shirt which shows the wounds and the autopsy report would show that also. And there's no contest that there was a wound in the chest. There's no contest in this case that the shot in the chest did cause the death. There's plenty of testimony to that effect.

And six, where he talked about guttering, I believe he said, shows the wound came from the left. That's perhaps the only picture which would add anything to the testimony and, I believe, he's already testified about that so all it shows is just more blood and the other wounds concerning the internal organs and we believe it does not add anything at all. It's been covered in the testimony and all it shows is a rather bloody autopsy.

So all the pictures of the internal organs, we believe, are of no probative value at all and they've already been covered in testimony and they've already been covered in the autopsy and they've already been covered in the coroner's report. They're merely cumulative and I think the prejudicial effect of putting on just a bunch of pictures to show a lot of blood outweighs any probative value they may have and for that
reason we ask the pictures not be received in
page 389 } evidence.

William F. Enos

The Court: Mr. Hassan?

Mr. Hassan: If Your Honor, please, there's no law that prohibits or in any way suppresses the pictures of an autopsy because they're bloody or because they're prejudicial. They are an accurate portrayal, and necessary and a routine procedure in a pathological examination. They have been routinely admitted for the purpose of showing the lethal wound, the direction of the criminal agency, and the testimony of the doctor will go on to show just exactly what the criminal agency was and to establish the *corpus delicti*, you need not only the dead body but you need the *corpus delicti*, a dead body that's shot, and an autopsy is necessarily bloody and the bloodiness of it is not prejudicial to the defendant when it's shown and this has been held in this jurisdiction as early as the O'Panowich Case and down through cases where Dr. Enos has testified and shown these slides, in the Cochran Case, in the O'Panowich and Cochran and Kensington on down through the line. They have been upheld in every jurisdiction and the Supreme Court of the United States and this type of photograph is upheld in the latest case in Virginia. There is every reason to show his face not only for identification, as the doctor testified when he was showing page 390 } these pictures, but because of the fragments of glass through which the bullet went before it hit the body and sprayed glass and cut his face and cut his hand. The detail of the holes in the shirt are necessary to match to the details of the holes in the body in order to show the criminal agency and the direction of that criminal agency.

They are necessary to show—to determine, as you noted on the slides, there was a ruler which determined the size of the hole which is necessary to determine, to obtain the opinion and conclusion of the size of the bullet as are the retrieved bullets which are retrieved in a penetrating wound.

There has been no citation of authority and I can give the Court ample citations from the Federal cases and from the Virginia cases to show the admissibility of this type of picture. You have the case of *Burns versus Baytolt* 371 Fed. Sec. 598, and that's in the Fifth Circuit which is one of the latest cases in the Federal System; and in the State System, you have *Commonwealth versus Rogers*, 222 Northeast Sec. 779, and in Virginia you have *Smith versus the Commonwealth*, decided October 10, 1966 and found in 207 Virginia at 459; and you have *Maxwell versus the United States*,

William F. Enos

368 Fed. Sec. 735, which is a Ninth Circuit case.
page 391 } And you have a raft of State cases that follows
those. Those cases state that slides and pictures of
an autopsy to establish the *corpus delicti* and the criminal
agent and to show the actual cause of death in detail in testi-
mony is not prejudicial and is admissible.

The Court: Do you have the advance sheet containing
207 Virginia 459?

Mr. Hassan: Yes sir. I also have synopsis of the two
Federal cases with me.

The Court: The Smith case cites three older Virginia cases;
Martin, Timmons, and Enoch.

Do you know, Mr. Hassan, whether those involved autopsy
pictures or just pictures of the body?

Mr. Hassan: I don't know, Your Honor. I think the
Timmon case does.

Mr. Harrigan: Timmon was a rape case, wasn't it, or a
rape and murder, two older ladies where they were beat up
and raped?

Mr. Hassan: I believe it was an autopsy in that case, I'm
not sure, but I think Mr. Koutoulakos cited that case to you
in the Spencer murder case or Mr. Gwaltney did.

The Court: I believe they did. I'm going to take a few
minutes to look at those cases. We will have a
page 392 } short recess.

(Whereupon, a short recess was taken.)

The Court: The case of *Smith* versus *Commonwealth* refers
back to *Martin* versus *Commonwealth* for its authority, evi-
dently. The Timmon case appeared not to be directly in point
since no objection was made to the introduction of the photo-
graphs in that trial. However, it does quote the Enoch case,
141 Virginia, where it says it is within the discretion of the
Trial Court although that Enoch case dealt with a different
kind of pictures because it was pictures found in the pocket
rather than photographs of a body in a homicide case.

However, the case of *Martin* versus *Commonwealth*, 184
Virginia, again says that the introduction of pictures of the
body of a deceased are in the discretion of the Court and the
Timmon case says that it doesn't make any difference that
they are bloody and intended to inflame the mind any more
than—it says the picture of the wounded body of a man in

William F. Enos

repose of death should excite no more than the living person in a bruised or torn body which frequently happens in a Civil case.

The Martin case goes on to give the guide lines under which such evidence might properly be admitted and page 393 } says the manner in which Martin was shot, the distance from which he was shot, and where the shot entered his body were relevant and material to the issue. The case points out that the photographic evidence shows no more than would have been disclosed by the view of the body itself which would have been proper if the object had been available at the time of trial. It gives more detail than dependency upon memory will do and the fact that the defendant does not controvert the shooting, it does not deprive the prosecution of its right to prove all of the details of the crime.

However, it does seem to the Court that it is for the Court to decide whether these pictures have any probative weight or not and it seems to me that to a lay Jury unskilled in medicine, the pictures of the inside of the body and the vital organs would show nothing at all and that the pictures of the bloody clothing have no probative weight because it is almost impossible to see the wounds from them. They're just pictures of a bloody shirt but that the pictures of the exterior of the body showing the wounds themselves and the nature and location of the wounds and direction from which the missile apparently penetrated as revealed by those pictures may probably be shown and also the outside of the body showing glass cuts would have some probative page 394 } value to the Jury showing the direction and force of the impact. So I will permit the pictures of the chest.

Mr. Hassan: If Your Honor please, before you make your ruling, may I advise you that in the course of the testimony of Dr. Enos and Dr. Beyer, we will introduce the fragments of the projectile which were removed from various parts of the inside of the body which are shown in these films and from which they intend to testify as to the location of these which are to be introduced here in evidence, the chain of evidence, which are reserved, and which are to be later testified to by the ballistic expert of the F. B. I.

One of the reasons for the pictures in this whole chain in connection with the recovery of these penetrating projectiles.

The Court: Well, if that's so, they're premature at this

William F. Enos

point but may become relevant to testimony later to be introduced. I can't say that they appear relevant on the basis of what I've heard thus far.

Mr. Hassan: Without knowing this, how can you determine the probative value of the interior pictures?

The Court: I'll permit you to reoffer them if they become material to the evidence when it's offered.

I take it these pictures were taken by Dr. Enos?

page 395 } Mr. Hassan: They were.

I think they were taken by Dr. Beyer.

The Witness: Yes. We both took them at various times.

Mr. Hassan: They were then handed in a sealed envelope to Sergeant Schoup who hand walked them through the processing procedure and returned them to Drs. Enos and Beyer and my three witnesses in a row Dr. Enos, Dr. Beyer, and Sergeant Schoup—

The Court: (Interposing) Well, then, there would be nothing wrong with you offering any pictures relevant to Dr. Enos' testimony.

At the time Dr. Beyer testifies, would there also be—

Mr. Hassan: (Interposing.) Dr. Enos recovered most of these projectiles and handed them to Dr. Beyer to place them in a plastic container and handed them to Sergeant Schoup.

Dr. Enos removed the clothing and personal effects and handed those to Sergeant Schoup and through these three witnesses, I intend to introduce this matter, and through Sergeant Schoup, some additional material.

The Court: Then you have not proceeded far
page 396 } enough in your examination of Dr. Enos to come
to the point of removal of the objects but it's
your contention—

Mr. Hassan: (Interposing.) When he locates the wounds—I'm going to go into each wound—and what he did find, also as to the size of the projectile.

The Court: What have you to say to that, Mr. Harrigan?

Mr. Harrigan: I'd like to see the picture he says will demonstrate this. I didn't see any bullets lodged anywhere in there.

The Court: While we're doing it, let's get it over with at this time and establish those facts so I can make a ruling on point.

The Witness: There are no pictures in this group which show missiles in the posterior thorax.

William F. Enos

Mr. Hassan: It shows where you penetrated to probe to find it?

The Court: Let's look at the pictures.

Mr. Hassan: The detail of the cutting open of the tract is not shown.

The Court: I'll give you an opportunity to point out to me what you propose to show us by the pictures when they're before us.

Go on down there, Doctor.

page 397 } Doctor, let me ask you, are there glass cuts in that picture?

The Witness: Yes. As you notice in the forehead right here. And there are several little penetrating wounds of the upper left and lower left.

The Court: What is the mark on the right cheek?

The Witness: This is dry blood.

The Court: All right.

The Witness: Now, to go into detail.

The purpose of this, of course, is to demonstrate no smudging or tattooing of the gorges to indicate that the gun was fired from a distance.

Mr. Hassan: There was no powder burns?

The Witness: Powder was not deposited.

Mr. Morris: I would like to request the Court to ask Mr. Hassan not to ad-lib. I don't think that's necessary.

Mr. Hassan: I understand that it is a proper of testimony and I'm just trying to save time. I think I know what I'm going to ask.

Mr. Morris: I don't know what he's going to ask.

Mr. Hassan: I hope he doesn't, Your Honor, I don't want him to read my thoughts.

Mr. Morris: Yes, but they get into the record
page 398 } and I don't think we should—

The Court: (Interposing.) That objection is well taken.

Mr. Hassan may—and I hope he does—ask Dr. Enos questions as he goes along but they should be questions to him as to what the pictures show.

Go ahead.

The Witness: Again, showing the details and lack of burning or sludging of powder.

By Mr. Hassan:

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Q. Put that back through and let me ask you a couple of questions.

They won't let me point things out to you.

What is this?

A. That is a ruler.

Q. What is that for?

A. This is a routine procedure to determine the size of the hole.

Q. What does that show in regards to the holes?

A. In this particular case?

Q. Yes.

A. It demonstrates the diameter and the width and/or diameter of three holes.

page 399 } Q. You're prepared to give that detailed information?

A. Yes, indeed, as compared with that in the body.

Then we have the overall picture of the thorax again. As we represented before, we diagnosed these in our autopsy as one, two, three, and four; major wounds. The other wounds you see are these small penetrating ones which were caused by glass and metallic fragments.

Mr. Harrigan: I'd like to ask one question on that picture.

The Court: Go ahead.

The Witness: I guess I can start all over again.

Mr. Hassan: Right there.

The Witness: This is the one you wanted to question on?

Mr. Harrigan: Yes.

Doctore, is that—has the whole on that chest been washed prior to the picture.

The Witness: No.

Mr. Harrigan: Nothing's been done to it?

The Witness: The shirt has been pulled up and the picture taken is all.

The Court: Doctor, let me ask you as to powder burns or other indications that the shot would have been
page 400 } fired from close range.

You say the picture with the shirt tends to show that was not the case?

The Witness: That's correct.

The Court: Because of absence of powder burns?

The Witness: Right.

The Court: Would those powder burns, if they had been

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there—and I realize this is not a fact—but if they had been there, would they show on the skin.

The Witness: Yes.

The Court: In other words, was the picture of the shirt necessary to show that as a fact.

The Witness: In other words, when the picture—the unburned powder particles are screened by the clothes and the wound on the skin does not demonstrate smudge or tattooing because the clothes have formed a screen or sieve, so to speak, to screen out the material.

The Court: Can you determine from that shirt, as bloody as it is, an absence of screening or tattooing?

The Witness: On the gross examination there was no burning and, of course, this material was also examined by the F. B. I.

The Court: As to your gross examination, you page 401 } were in a position to make—with that amount of blood on it, would you have been able to tell?

The Witness: It was within close range, you may say within two or three inches, you frequently get charring of the clothes which is quite evident despite the presence of blood.

The Court: All right.

By Mr. Hassan:

Q. In addition, does that show glass cuts?

A. Yes, in the thorax, many small penetrating wounds caused by the glass.

Shall I proceed?

Mr. Harrigan: Yes.

The Witness: And then we go into detail as to the description of each of these wounds as recorded in this autopsy, more detailed pictures.

The Court: Now Doctor, that's the only picture of the internal organs?

The Witness: This is the only one we have of the internal organs.

The Court: Can you determine for me anything that you can prove by that, that's material to this case?

The Witness: This is the left lung and the right page 402 } lung: this is the heart, right down here, and there's the root of the aorta. See? The aorta has been opened demonstrating the defect on its left border,

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right there, and split in the back indicating the missile went from left to right through the aorta corresponding with a guttering phenomena of the skin.

The Court: Is the tract of the bullet evident from this photograph?

The Witness: Yes, to some degree.

Now, you must remember the aorta has been opened.

The Court: This is the posterior wall?

The Witness: We are looking at the inside of the aorta, right.

Here's the aorta. As you know, it is a tube. I have opened it up here and laid the aorta open.

Here's the left side of the aorta as it comes out of the heart and here's a defect there where a missile entered and here's a right posterior aspect of the aorta where the missile went through and out, indicating a wound tract in this direction.

By Mr. Hassan:

Q. Now, does this information enable you, within medical certainty to estimate the time a person would live page 403 } and move from the time of the entry of the projectile until he would be immobile?

A. When the missile traverses this vital area, there was obviously a massive hemorrhaging from two to three minutes which would be the most that this man lived.

Q. Would he be capable of movement during that period of time?

A. Yes, he would be capable of movement.

Q. And is this—in order to make this conclusion you must have the location of the wound, particular type of wound?

A. In determining the length of the time that the man would live to make an intelligent estimation, you would have to see the wound.

Q. Now, is this where you probed to find a projectile?

A. Well, this is part of the wound tract, yes.

Mr. Harrigan: I object to that. It wasn't responsive.

The Court: Well, answer the question, Doctor.

Is this where you probed to find the projectile?

The Witness: Yes. We can say we probed this area continuing from the skin through the, what we call the anterior midsternum, through the aorta.

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page 404 } The Court: And this gave you the direction
which you testified to, from the left and above as
part of that course?

The Witness: That would be the wound of entrance and the direction through the body and the fixed point caused by the missile's going through the windshield which gives us a very good estimate as to the direction from which the missile came.

The Court: Any further questions, gentlemen, on this point?

Mr. Harrigan: I have one other question.

As a matter of fact, Doctor, it depends on which direction the body was sitting in, or leaning back, would depend on which direction the bullet went in?

The Witness: That's correct.

Mr. Harrigan: So if he was leaning forward or backward, you would have a different angle in the body?

The Witness: That's correct.

Mr. Harrigan: If he was leaning back or forth, you wouldn't know which direction it went in?

The Witness: We have a fixed point. Let's make that very clear.

Mr. Harrigan: The windshield?

page 405 } The Witness: Right.

That fixed point has to be—he has to be sitting in that area.

Mr. Harrigan: I'll ask one other question on the fixed point.

You're assuming no deflection when it hits the windshield, aren't you?

The Witness: As it went through the windshield, there was a round hole with spalling on it inside and the spalling inside was of such a character that the missile remained on a nose flight straight in.

Mr. Harrigan: Are you a ballistic expert?

The Witness: Wound ballistics.

Mr. Harrigan: By the very nature of the hole itself obviously, that bullet fragmented and deflected in various directions, didn't it?

The Witness: The bullet did fragment.

By Mr. Hassan:

Q. Did you examine the vehicle also in connection with your findings of the autopsy?

A. Yes, the day of the autopsy we went down and looked at

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the vehicle.

Mr. Harrigan: So are you qualified to say how
page 406 } much or if a bullet would deflect going through a
windshield like that or is this an assumption you
made?

The Witness: Well, I'm not a ballistics expert.

As you know, the science of ballistics is divided into interior and terminal. To understand terminal ballistics you must have some knowledge of external ballistics, in the strictest sense of the word as to external ballistics, but you have to have some understanding, you have to understand the wounds.

The Court: All right, sir.

And there's just one other photograph and that's of the hand which shows glass cuts?

The Witness: That's correct.

The Court: All right.

Thank you, Doctor. You may return to the witness stand.

Mr. Harrigan: One other question on glass fragments.

Did you take glass out of those particular wounds that are demonstrated?

The Witness: As a matter of fact, I cut my finger on one.

Mr. Harrigan: Is that out of every wound?

The Witness: Not out of every wound, no.

page 407 } Mr. Harrigan: So you don't know whether
they were all glass fragments or from some other
source?

The Witness: No, but obviously the majority were caused by glass fragments and on palpation you could feel glass under the skin.

The Court: You gentlemen wish to address further argument on this point?

Mr. Harrigan: I would have the same argument as before, Your Honor.

In view of his testimony as to which angle the body was in, it's apparent this picture here did not disclose where the bullet was located. His answer to that was—well, we started from the skin and we went on through.

The obvious inference was that they found it somewhere else other than where the picture discloses, or deeper, is that correct?

The Witness: That's correct.

Mr. Harrigan: It doesn't disclose whether in fact the bullet

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was found. It discloses the aorta which is already in evidence. The bullet went into the aorta and the aorta, as he said, is not the aorta as it ordinarily looks but an aorta that has been opened up surgically which does not reflect a true picture, I don't believe, and would be of no probative value at all.

page 408 } The Court: It appears to the Court that sufficient foundation has been laid for the showing of all of these photographs.

If it had not been for the last examination, I would not have admitted two photographs of the interior of the body but I feel there has been a sufficient explanation as to the way it illustrates and supports the opinion of the pathologist as to the direction of travel of the missile and the explanation of why he has concluded it came from above and the left, lining up the marks within the aorta with the puncture of the chest and with the mark on the windshield. Evidently, his testimony then makes a coherent whole on that point.

It does seem to me to be relevant as to what the Commonwealth is entitled to prove and the objection is overruled.

Mr. Harrigan: Exception. And I take it the three pictures of the shirt are coming into evidence also?

The Court: Were there three of those? It seems to me one was enough. All he has to do is have one to show there were no powder burns or screening or tattooing as he testified to and that I would see no reason to reiterate that.

page 409 } Mr. Hassan: The one with the ruler on it—I would like to have these at this time marked for identification.

The Court: All right.

Let him take out those he does not require for that purpose and—

Mr. Hassan: (Interposing.) I would like to have him keep the order he wants them in and I think they should be identified as Commonwealth's A, B, C, D, and E.

The Court: We've already used number one so this will be Commonwealth's 2A, B, C, and D and so forth.

Mr. Hassan: Yes.

The Witness: I've taken two out.

Mr. Hassan: All right.

By Mr. Hassan:

Q. 2A is the face; 2B is the shirt; 2C is the chest?

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A. Correct, the overall picture of the chest with the shirt off.

Q. 2D is a closer view?

A. Yes, a closer view with a ruler next to the wound.

Q. 2E is the detailed entry?

A. Yes, of the four wounds.

Q. And glass, glass in the overall—that's E, 2E?

A. And the next is a detailed picture of wound
page 410 } one; and the next is a more detailed picture of
wounds two, three and four.

Q. That's 2G.

A. Next one, is a picture of the aorta.

Q. 2H, the aorta.

A. And the last is a picture of the hand.

Q. The hand is 2I.

Mr. Harrigan: Note my exception to the Court's ruling on the grounds previously stated.

The Court: All right.

Now, Mr. Hassan, do you want the doctor back on the witness stand when the Jury comes in?

Mr. Hassan: I would prefer to go right into these pictures.

The Court: All right. Doctor, you may stand down.

Call the Jury in.

(Whereupon, Commonwealth's Exhibits 2A, B, C, D, E, F, G, H, and I were marked for identification.)

(Whereupon, the Jury was returned.)

The Court: All right, Mr. Hassan.

FURTHER EXAMINATION BY COMMONWEALTH'S ATTORNEY

page 411 } By Mr. Hassan:

Q. Dr. Enos, did you take some pictures and had some slides prepared of the examination of George Lincoln Rockwell?

A. Yes I did.

Q. Would you show the Jury and explain to them each of your slides?

A. The first photograph, 2A: was taken to identify the de-

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ceased and B: to demonstrate the presence of the wound in the skin, the small puncture wounds—

Mr. Harrigan: Excuse me.

Can all the Jurors see all right?

The Witness: (Continuing.) Small puncture wounds described over the face and forehead, demonstrated here and here and here. These puncture wounds were found to be due to primarily glass fragments in the thorax.

The second photograph depicts the clothing with a ruler to estimate the size of the holes in the material which were stained with blood and also depicts there was no burning caused by the discharge of the gun at close range, no smudge or tattooing; that, is, unburned particles which would be deposited on the material if the gun was fired at close range.

The next picture demonstrates that the shirt had been rolled back and shows four major wounds in the
page 412 } thorax which are designated during autopsy as one, two, three, and four. There are many small puncture wounds scattered over the thorax which were caused by glass fragments and metallic fragments; primarily glass fragments.

Now, this picture is not exactly the way I want it but I think we can still use it.

Mr. Hassan: Would you take it out and put it in right.

The Witness: Now, this is a more detailed picture of the wound in the thorax, again with the ruler to determine the size of the wound.

Now, this is wound one, located seventeen inches from the top of the head, seventeen inches down and one inch to the left of the midline, the midline being here, one inch over. As you can see, it's a regular rectangular wound measuring one inch by seven-eighths. It shows guttering. In other words, under-cutting here and this is caused by the missile not entering the tissue nose cone, like this, but coming at an angle and causes this so-called guttering phenomena, showing under-cutting.

Now, I will go into more detail. The wound tract—and this is a wound tract as it comes from here and enters a third interspace, that is between the ribs, adjacent to
page 413 } the body of the sternum which is the breast bone here and goes to the left lung, interventricular border for one inch in diameter and deflected to the left side

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of the base of the aorta which I will show you in detail later and exited through the posterior of the aorta two inches long, through the sternum *vena cava* which is located behind the aorta and through the *vena cava* into the soft tissue of the lungs to the upper left hand of the right lung and exiting on the posterior surface through the fifth interspace seven sonometers from the posterior line.

Now, we're inside but talking about here. In other words, the missile comes down through all the tissue and ends up over here and this is covered with metallic fragments removed from the underlying muscle.

Now, this becomes more clear as we go along.

That whole thing describes that first wound.

Again, we have a more detailed description of the underguttering showing the missile came in at an angle. The other three wounds, number two below this one is eighteen inches to a quarter over one half inch in diameter and slightly guttered and in the interior medium surface, as you can see there, and this wound can be probed only five millimeters. We just got through the skin and there no fragments are recovered. The fragments apparently came out.

Wound three which is below it, is eighteen and three quarters inches from the top of the head and three and a half inches to the left of the midline and measured *three-eights* inches in diameter.

The wound tracts were entrances to the left for the interspace, four and a half inches to the left of the sternum again and the fragment is removed from the pericardium sack on the left side. That is the pericardium sack which is the outside of the sack which contains the heart.

And the fourth wound you see in the body is nineteen and three-quarters inches from the top of the head and metal like fragments were removed from the subcutaneous tissue.

This is a more detailed picture of wound number one and this is the lethal wound showing clearly the guttering on the left, here, and the missile comes in this way and enters the body.

This is a more detailed picture of three, which I have just described and in this one the body has been opened up. the sternum has been removed, and you're looking at the aorta and the lung and the great vessels.

This is the left lung and this is the right lung

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page 415 } and this is the aorta and this is the heart. The important aspect here is these two holes jagged and outlined. As you see, the aorta has been opened up. This, again, as I say, is the heart here. The aorta has been opened up. I made an incision like this and I opened it up and it shows a defect in the left or the posterior. In other words, when you line this up with the skin, the missile comes in this direction and into the back. The wound tract is from the left, comes from the left and goes toward the right and slightly posterior, in this direction slightly downward.

And this is a picture of the deceased's hand showing multiple puncture wounds, again caused by flying glass.

Mr. Hassan: Take the stand again, Doctor.

By Mr. Hassan:

Q. Now Doctor, the lethal wound you say was wound number one?

A. Correct.

Q. When a person receives such a wound at such a location, how long can he live and move from the time of the entry of the bullet until his demise?

A. Well, a conservative estimate would be that he lived no more than three minutes.

Q. And during that period of time was he capable of movement?

A. He was capable of movement. He would be, yes, for a brief time.

Q. For a period of about three minutes?

A. (nodding affirmative.)

Q. Now Doctor, did there come a time when you recovered any fragments from George Lincoln Rockwell's body?

A. Yes.

Q. And where would they have been recovered from and what was done with them?

A. Largely, recovered metal fragments were removed from the underlying muscle in the fifth interspace at a point seven sonometers from the posterior midline on the right side, right fifth interspace. In other words, it's back here but, again, I emphasize it's inside. This was duly labeled and given to Mr. Schoup.

Shall I go on?

Q. Yes, go on with the fragments you recovered.

A. And number two, there was no metal fragments and number three, metal fragments were—

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The Court: (Interposing.) You're referring now to wounds, Doctor?

The Witness: Yes.

page 417 } The Court: In other words, the fragments that you just mentioned came through number one?

The Witness: Correct.

The Court: None was found in two?

The Witness: No metal fragments were found in two.

And number three, which entered throughout the fourth interspace, one-half inch left of the sternum bar and fragments were removed from the external solid fat on the left side. This is the fat on the outside of the sack which contains the heart.

And in number four—that was wound three. Number four is a small metal fragment found in the subcutaneous tissue. That is the tissue underneath the skin. These all were labeled, dated, signed and given to Schoup.

By Mr. Hassan:

Q. Now Doctor, did you find any other type of fragments other than metal fragments?

A. We found a small puncture wound described over the face, thorax, and hand which were caused by small glass fragments.

Q. Did you remove or feel any such fragments in your examination of the body?

A. Yes, we removed some unpalpated fragments
page 418 } in the tissue.

Q. Now, were you able to determine from your examination of wounds one, two, three, and four the approximate or accurate size of the projectile that caused them?

A. The projectiles, metallic fragments, were formed of the missile. There were some defective. They were not measured at the time of the autopsy. However, the missile wounds, as described before, in the skin were accurately measured.

Q. And do you determine from those measurements the caliber of the projectiles that cause the wound?

Mr. Harrigan: I object to that, Your Honor, unless he lays the proper foundation. Whether he can determine caliber from the wound, there is perfectly apparent—you know the skin is elastic and you can't determine a caliber from the hole in the skin and if he has a foundation on whether

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that's possible or not, I think it's necessary before he gives an opinion as to what caliber it was.

The Court: As I understand the question, it was do you determine—is that right, Mr. Hassan?

Mr. Hassan: Could he determine.

The Court: By that you mean can he?

Mr. Hassan: Could you?

page 419 } The Court: Put in that form, it's all rightt.

Can it be determined and can you?

The Witness: It can be fairly accurate if the missile flows on.

Mr. Morris: Why don't we stick to the case at hand? I don't think we would be interested nor the Court or Jury be interested as to what may happen.

The Court: Mr. Morris. I'm going to hear one counsel at a time on one witness. You may alternate but Mr. Harrigan is taking this one.

In this particular case, he was asked, and I personally wanted him to be asked, whether or not it's possible to determine this in the abstract and once he has answered that, he can come down to the present case. But by way of laying the foundation, he can ask whether it's possible.

Go ahead, sir.

The Witness: Well, in this case where I described the missile has not struck something and enters nose on and punches out a piece of skin approximately the size of the missile. Again, in this particular case, the missile went through glass and came in at an angle so it would be very difficult to determine the caliber from the holes in the skin.

By Mr. Hassan:

page 420 } Q. Is it possible for you to have with any medical certainty an opinion as to the size of the caliber of the bullet that made the wound?

Mr. Harrigan: I object to that.

Mr. Hassan: (Continuing.) Based on the previous answer to the last question?

The Court: The objection is premature.

I'll let him answer if it's possible. Then, we may examine as to how it's possible.

The Witness: In this case I would say it was very difficult to do. I don't think it would be possible.

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By Mr. Hassan:

Q. Did you arrive at an opinion in this case?

A. We figured—

The Court: (Interposing.) Don't say what it was. Just answer, did you arrive at an opinion as to the caliber of the bullet in this case.

The Witness: Not exactly, no.

By Mr. Hassan:

Q. Now, you say you did not find any powder burns.

Would you tell us what powder burns might indicate or the lack of them might indicate in a projectile wound of this character?

page 421-422 } A. When a gun is fired at close range, say like a foot, and, of course depending on the caliber and the type of gun, but at a close range, the unburned powder particles as well as the burning powder particles are blown on to the fabric, clothes, on to the skin if it goes through, if there's no clothing over the skin. Now, on skin you can measure the direction this material and arrive at a fairly accurate estimation as to how far the gun was held when it was fired by comparing it with paths which are fired through paper and so forth.

In this case, there was no evidence of charring smudging, or fragments on the material.

Q. And does that give you basis for an opinion, with any medical certainty, as to the minimum distance away that such projectile could be fired?

A. The minimum?

Q. Yes.

Mr. Harrigan: I object to that. First, I think he has to establish him as some sort of a ballistics expert which he hasn't done and the testimony in the case is clear at this point that this bullet went through glass and he hasn't testified, since the bullet went through glass, whether there was any powder burns on the glass and how he can eke out an opinion which would do anybody any good, I don't
page 423 } know. I think he should lay a foundation for those an opinion.

The Court: The objection is over ruled.

Mr. Harrigan: Exception.

The Witness: Well, they were certainly fired beyond a foot.

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This is not considering the windshield, it's considering the pattern on the clothes.

By Mr. Hassan:

Q. Now, it would be at least a foot away from the body.

Did there come a time when you examined the automobile?

A. We did the same day following the autopsy.

Q. And what did your examination of the automobile disclose to you, if anything?

A. There were two defects in the windshield in the left upper quadrant of the windshield. The defects were characteristic of those caused by missiles going through glass where there was marked spalling.

The Court: How do you spell that word?

The Witness: S-p-a-l-l-i-n-g.

From the spalling of the glass from the inside, you see, it's like when the BB hits a windshield and the glass spalls off on the side, and that's very prominent in this case indicating two missiles went through the windshield and as page 424 } the glass spalled off, it assumes the energy or a portion of energy of the missile as it goes through and these were sprayed on to the deceased as you saw it actually on the skin.

By Mr. Hassan:

Q. Did you examine the vehicle for any fragments of a projectile?

A. Fragment of a projectile?

Q. Yes sir.

A. We did not, no.

Q. You did not.

Now Doctor, first of all, where did you examine this car?

A. At the police lot in back.

Q. And who was present?

A. There was myself, Dr. Beyer, Dr. Dolan, and a police officer who was in there, in the garage. I don't know what his name is.

Q. And was photographs taken?

A. I took photographs of the automobile.

Q. You took photographs of the automobile.

May I ask you whether or not you took those photographs or whether they were taken by someone else?

page 425 } A. These were taken by someone else.

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When I took the photographs, the car was in the garage.

Q. In the garage.

Where are your photographs?

A. In my office.

Q. Were you present when these pictures were taken?

A. I was not.

Q. Was Sergeant Schoup present when you examined the car?

A. Sergeant Schoup was not with us when we examined the car.

Q. He was not.

A. To the best of my knowledge, he was not.

Q. Now, from your examination of the car and your examination—on your examination of the car, did you find powder burns on the windshield?

A. We did not.

Q. From your examination of the car and your examination of the direction of the projectile through the body, did you arrive at your opinion which you earlier expressed?

A. We did.

Q. And that opinion was that the bullet came
page 426 } from above and to the left of where Lincoln Rockwell was sitting in that car?

A. Yes.

Mr. Harrigan: Objection, Your Honor.

I move to strike the question as leading and if he has an opinion, I think the doctor ought to testify to it and not Mr. Hassan.

The Court: Objection is over ruled. It's restating matter.

Mr. Harrigan: All right.

Exception.

Mr. Hassan: Then the answer stands, Your Honor?

The Court: Yes.

Mr. Hassan: Then I have no further questions.

The Court: Mr. Harrigan.

Mr. Hassan: I'm sorry. I do have one.

By Mr. Hassan:

Q. Did you remove any of the personal clothes and property of Lincoln Rockwell?

A. We undressed him, yes.

Q. Did you or Dr. Beyer?

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A. We both did. Clothes, T-shirt, wrist watch, and wallet and these were given to Sergeant Schoup.

page 427 } Q. And they were given to Sergeant Schoup?

A. Correct.

Mr. Hassan: I have no further questions.

CROSS EXAMINATION

By Mr. Harrigan:

Q. What are you looking at there, Doctor?

A. The autopsy report.

Q. May I see it?

Doctor, your pictures indicate there were four wounds, some superficial?

A. Yes, we designate them as you see there, four major wounds and some puncture wounds.

Q. You're not suggesting there were four bullets are you?

A. That's correct.

Q. You're suggesting that?

A. I am not suggesting that.

Q. Would it be safe to say that as a result of one bullet, those were four wounds?

A. We felt the wounds were caused by two bullets.

Q. Did both bullets fragment?

A. Yes.

Q. What experience have you had in firing bullets through glass as to how they deflect up or down or fragment?

A. Firing through glass?

Q. Yes, your experience please.

A. A: I have not done any experimental work on bullets going through glass and I'm just trying to recall in my own mind whether we had any other cases. For the moment, I can't recall.

Q. So this is the first case where you can recall where you had this situation, is that right?

A. I have in the back of my mind that we had another one or two but I can't put my finger on it at the moment.

I think that I'll have to state that is as it stands now.

Q. All right.

Now Doctor, depending on which angle a person is seated in a particular car would also help to determine the angle a bullet went in?

A. The angle at which the person was sitting determines the angle of what?

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Q. If a bullet strikes someone, depending on the angle the body is it depends on the tract it takes, whether it goes up or down?

A. Yes, it depends on the position of the person
page 429 } that's hit.

Q. And you don't know what angle he was sitting?

A. I do not. However, if I may go on in detail?

Q. Yes.

A. In ballistic cases there is an important factor here and the important factor is whenever a fixed point—as a matter of fact we have two fixed points—and there are the defects in the windshield and assuming Mr. Rockwell was sitting in the front seat where most drivers do and alining the body with the wound of entrance one and three up with the wound—I mean the wound of entrance with the defects in the windshield which are fixed points then you can draw only one conclusion which would be from above and to the left.

Q. Are you through?

A. Yes.

Q. Now, but the fact of the matter is you didn't align the body up did you?

A. No. However, we measured four, called here the distance from the the top of the head, with the distance from the right or left of the midline.

Q. Where did you examine the car?

A. At the police property yard in Arlington.

Q. Did you ever go to the scene?

page 430 } A. No, I did not.

Q. So if that car was on an upgrade or a downgrade, that would make a difference too, wouldn't it, as to the angle?

A. It might, yes.

Q. Now, have you ever heard of a bullet after it hits, especially one that's already blown apart, hit the body that it would go on some other direction in the body other than straight in?

A. It would be deflected by some other object in the body, yes, bones in the body, yes, that happens.

Q. Did this one hit any bones?

A. I don't think so.

Q. Would you show me on here where you said it did or did not (indicating autopsy report)?

William F. Enos

A. Right.

I'll have to read this again.

This is wound one, seventeen inches to the top of—

Q. (Interposing.) Could you just go over it to yourself?

A. All right.

The wound tract entered the left third interspace indicating it did not hit the rib adjacent to the body of the sternum and indicated it did not hit the sternum, then into the lung along the body.

page 431 } The Court: So the answer, Doctor, is it did not hit bone until it came to rest?

The Witness: Right.

The Court: That would be true of both fragments you found?

The Witness: That is correct.

By Mr. Harrigan:

Q. Now, is that the big fragment you're talking about?

A. The big fragment and the smaller fragment.

Q. They both went into the same place?

A. The big fragment was designated wound one and the small fragment entering the pericardial sack indicated—

Q. (Interposing) And you say that both did?

A. Both did.

Q. Both did in different places?

A. Right.

Q. Now, is it necessary to hit a rib to have it deflect, especially a bullet which is not intact, in a different direction than the original line of flight?

A. It could possibly, yes, without hitting the bone and then it could deflect and bounce off. It's conceivable.

Q. So would it be fair to say, as far as the angle of the bullet in the body plus all the variables, it would be
page 432 } very difficult to determine what happened or how it came about?

A. I don't believe so.

We have a continuous wound here. I know it wouldn't be—we have a continuous wound tract, wound of entrance going through tissue in a direct line and coming to rest in the soft tissue in the back. I don't believe that's very complicated to determine in what direction it's coming from.

Q. All right.

The other fragments, did they resemble just lead?

William F. Enos

A. Core of the missiles.

Q. Core.

And you say—

A. (Continuing.) Which could be identified, obviously, as bullets.

Q. But you said you didn't weigh them?

A. We did not.

Q. Now, when you examined the car, did you find any other fragments?

A. No, we didn't, as a matter of fact. We—we didn't find any fragments, no.

Q. What kind of car was it?

A. I knew you were going to ask that.

page 433 } I really don't know.

Well, wait a minute, I shouldn't say because I'm not sure.

Q. You're sure you looked at the right one?

A. Pretty sure.

Mr. Harrigan: I don't have any other questions.

The Court: Mr. Hassan?

Mr. Hassan: I have no further questions.

The Court: May the doctor be excused?

Mr. Hassan: Yes, he may.

Mr. Harrigan: Could I ask one more question concerning the powder burns?

Further Examination By Counsel for the Defendant

By Mr. Harrigan:

Q. Did you examine the windshield for powder burns?

A. Yes we did. We looked for powder burns—not powder, powder burns. Actually, the glass wouldn't burn.

Q. So?

A. We took pictures of it and found no evidence.

Q. Did you look at it naked eye or did you just look at it with a microscope?

A. No microscope.

Q. Now, powder, would that stick to the glass
page 434 } or would it blow off?

A. I imagine so if it was at very close range to the glass it would be driven into the glass.

Q. Who was with you when you examined this windshield?

James Beyer

A. Dr. Dolan, Dr. Beyer, and one of the policemen who has charge of the yard down there.

Mr. Harrigan: Thank you, Doctor.

The Court: Any redirect on that, Mr. Hassan?

Mr. Hassan: Beg your pardon?

The Court: Any redirect.

Mr. Hassan: No.

The Court: Doctor, you're excused.

Mr. Hassan: Dr. Beyer, please.

Whereupon, JAMES BEYER, was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir, and your occupation.

A. James Beyer, pathologist, Arlington Hospital.

Q. Did you participate with Dr. Enos and others in the autopsy of George Lincoln Rockwell on August 25, 1967?

A. Yes, I did.

page 435 } Q. And are you familiar with Dr. Enos' report?

A. Yes, I am.

Q. And are you in agreement with that report and do you join with him in making the report?

A. Yes, I do.

Q. Is there anything in that report which you differ with?

A. Nothing.

Q. Now, are you familiar with the slides that Dr. Enos made and with his detailed study and analysis of those slides?

A. Yes, I am familiar.

Q. And do you agree with that?

A. Yes, I do.

Mr. Hassan: Ask the Property Clerk for Property No. 3874.

By Mr. Hassan:

Q. Did there come a time when you, together with Dr. Enos, you removed some fragments from the body of George Lincoln Rockwell?

James Beyer

A. Yes, there was.

Q. And did you place them in a container and turn them over to Sergeant Schoup of the Arlington County Police Department?

page 436 } A. Yes, I did.

Mr. Harrigan: The doctor keeps saying "Yes I did" and "No I didn't" and so forth. I would just as soon the doctor testify after he has the property.

Mr. Hassan: If you want to be patient—Your Honor, the property will be here in a moment and I just wanted to get these questions in before I did have them and then I can have him identify them.

The Court: I consider the leading harmless at this point, but I won't allow him to lead when he gets to matters of opinions.

By Mr. Hassan:

Q. Doctor, will you open these and tell us what they are?

A. These are three containers, each one containing a single fragment, the three being removed from the body of Mr. Rockwell during our performance of the autopsy.

Q. Well, now, are they numbered, Dr. Beyer?

A. Yes, they are numbered.

Q. And do you have the one which was removed from wound number one in Dr. Enos' report?

A. Yes, I have it here.

Q. And would you look at that and tell me, sir,
page 437 } whether or not you can identify that as a fragment from wound number one?

I believe that's number two in the exhibits.

A. Yes, this is a fragment. The body is identified and the fragment itself is identified.

Q. And how did you identify the fragment?

A. By placing my initial at the base.

Q. And where was that removed from?

A. This fragment, which is associated with our wound number one, was removed from the right posterior thorax or posterior chest wall.

Q. And did you—you marked that and gave that to Sergeant Schoup?

A. I did, yes.

Q. And that was marked number two on the envelope, was it sir?

James Beyer

A. This is item number two on the envelope.

Q. And that property number—I would like to have this marked for identification.

The Court: Let it be marked by the Clerk.

Are you going to keep it in the bottle and that in turn in the envelope?

Mr. Hassan: In the envelope and that will be page 438 } No. 3A.

(Whereupon, Commonwealth's Exhibit No. 3A was marked for identification.)

By Mr. Hassan:

Q. Now, will you examine number one.

THE COURT: Now, we're referring to what he calls item number one?

Mr. Hassan: Item number one which will be 3B.

By Mr. Hassan:

Q. And did you mark that similarly?

A. The bottle is marked. The fragment itself has been marked on it which I placed there.

Q. And where did that come from?

A. This is associated with our wound number four and was removed from the subcutaneous tissue of the left chest wall.

Mr. Hassan: I would have that marked for identification as Commonwealth's Exhibit No. 3B.

(Whereupon, Commonwealth's Exhibit No. 3B was marked for identification.)

By Mr. Hassan:

Q. Do you find markings on that sir?
page 439 }

A. Yes, there are markings on the bottle and on the fragment itself.

Q. And did you make those marks there, sir?

A. Yes I did.

Q. Where did that fragment come from?

A. This is associated with our wound number three and removed from the sac around the heart.

The envelope is labeled item number three.

James Beyer

Mr. Hassan: I would like to have this marked for identification as Commonwealth's 3C.

(Whereupon, Commonwealth's Exhibit No. 3C was marked for identification.)

By Mr. Hassan:

Q. Now, Dr. Beyer, what is the nature of the markings that you placed on these so that counsel may examine them to determine the markings?

A. Attempt was made to place my initial "B".

Mr. Hassan: Does Mr. Harrigan desire to have the doctor point out the markings?

Mr. Harrigan: Just show me.

Maybe I can't see it too well.

The Witness: My mark will be placed on here at page 440 } this point. Since this surface was irregular and I attempted to put a "B" down there.

Mr. Harrigan: Those other markings aren't yours?

The Witness: No, they are not. Those markings weren't on there when I recovered them.

Mr. Hassan: Now, if Your Honor please, I would like to offer in evidence Commonwealth's 2A, B, C, D, E, F, G, H, and I, without reshowing them through Dr. Beyer who has testified that he has seen them and is familiar with them and agrees with them.

They were Dr. Enos', and were marked for identification.

The Court: I take it the defendant objects on the grounds previously stated?

Mr. Harrigan: Yes, Your Honor.

The Court: The objection is over ruled and they will be received in evidence.

Mr. Harrigan: Exception.

(Whereupon, Commonwealth's Exhibits No 2A, B, C, D, E, F, G, H, and I were entered into evidence.)

By Mr. Hassan:

Q. Now, Dr. Beyer, did there come a time when page 441 } you examined the automobile?

A. Yes, we made a visit down to the garage where the automobile was located.

James Beyer

Q. Would you please describe to the Court and Jury where you saw the car and what you observed?

A. The car was in one of the County garages down there at Shirlington and I did not make a detailed examination of the automobile, the interior of it. The doors were locked.

There were holes in the windshield.

Q. And did you examine those holes?

A. Very superficially.

Q. Now, from your participation in the autopsy and in the recovery of the fragmented bullets and your examination of the vehicle, have you been able to form an opinion as to the direction of the trajectory that entered the body of George Lincoln Rockwell?

The Court: Mr. Hassan, unless counsel wishes to waive it, you did not qualify him as an expert. You did Dr. Enos but you did not Dr. Beyer.

Mr. Harrigan: I waive it.

The Court: You will stipulate as to his qualifications to give an opinion?

Mr. Harrigan: As to medical, but not as to page 442 } ballistics.

Mr. Hassan: Will you stipulate as to his background being the same as Dr. Enos'?

Mr. Harrigan: I will stipulate to his qualifications as a doctor and his field as a pathologist. To go beyond that and stipulate that he's a ballistics expert, I couldn't do that because I don't think he is.

The Court: All right.

By Mr. Hassan:

Q. Well, Doctor, is there a ballistics field in medicine?

A. Yes there is.

Q. And is that the internal ballistics of nature of wounds in the body?

A. Yes, it includes both internal and terminal ballistics.

Q. And have you had any special education or training in this field?

A. Yes, I have.

Q. And where was your training?

A. During my time in the Army, which encompassed approximately twelve years, I conducted battle casualty surveys both in Korea and Vietnam. I was in charge of Army Surgeon General's medical research program in wound ballistics

James Beyer

and the author and editor of the Army Surgeon General's Volume on Wound Ballistics and I'm still active in the field.

Mr. Hassan: I submit no further time is needed
page 443 } to qualify him as an expert.

Mr. Harrigan: I would like to ask a couple of questions.

The Court: Your witness, Mr. Harrigan.

Mr. Harrigan: Are you discussing internal ballistics? You make it two phases, internal and external.

Mr. Hassan: He did not say external.

Mr. Harrigan: All right.

The Court: That was my understanding.

Mr. Harrigan: Internal would be in the body?

The Witness: Yes. Terminal ballistics would be the mode of action and mechanism of wound. In other words, it's the terminal phase of wounding, whether it's against an interminate object or against a living organism.

Mr. Harrigan: Well, does that deal with trajectories and so forth?

The Witness: Yes it does.

Mr. Harrigan: Does that mean you're familiar with trajectories?

The Witness: If, by that you mean the angle of incidents at the time of impact, yes I am familiar.

Mr. Harrigan: Now, have you had other cases
page 444 } involving bullets going through windshields?

The Witness: Yes, I have.

Mr. Harrigan: When was the last time when you had one of those?

The Witness: Other than Mr. Rockwell?

Mr. Harrigan: That's right.

The Witness: Estimating, I have had approximately a hundred cases with animals and inanimate object, firing through plastics, and thin armored materials, in addition to glass. During the Korean war we had a considerable number. I do not know the exact number where they had gone through glass prior to entering into a casualty.

Mr. Harrigan: All right.

The Court: Go ahead, sir.

Mr. Hassan: Would you repeat that question that I asked before we got on to this, the question about the trajectory?

Whereupon, the Reporter read back:

James Beyer

“Question: Now, from your participation in the autopsy and in the recovery of the fragmented bullets and your examination of the vehicle, have you been able to form an opinion as to the direction of the trajectory that entered page 445 } the body of George Lincoln Rockwell?”

By Mr. Hassan:

Q. Can you answer that question, Dr. Beyer?

A. Yes.

If the individual had been seated behind the steering wheel of the automobile, the angle of the wounding would have been from the upward and to the left as it entered into the body.

Q. And, Doctor, would the angle of the bullet within the body have been different if he was leaning forward than if he was leaning back when the bullet enters and passes from the left to the right; the angle?

A. The angle. They type of wound that is make would be altered depending upon the position of the individual at the time of the body with impact.

Q. Is it not true, Doctor, forgetting the Rockwell wound, Doctor, and forgetting any organs at all, would the angle be different whether it came from left or right whether the body was leaning forward or back?

A. The angle would be different.

Q. With relation to what?

A. The type of wound which was sustained in page 446 } the skin.

Q. Even the type of wound that was in the skin?

A. Yes sir.

Q. Can you tell from the wound in Rockwell's skin the position of the body at the time it was hit?

A. On one of the wounds there is definite evidence. This is our wound number one. This has guttering which indicates he may have been leaning slightly forward.

Q. And this is what produced the wound in the aorta?

A. That is the critical wound, yes.

Q. Now, Doctor, do you have an opinion as to how long George Lincoln Rockwell lived and controlled movement after the entrance of the projectile to the time that he was demised?

A. Approximately three minutes.

Q. And during this period of time he could control his movement?

James Beyer

A. He would have some control, yes.

Q. He would be able to move considerable distance, as far as possible, in three minutes?

A. He would be able to move and have some control over those movements.

Q. Now, Doctor, did you assist in the removing of the personal property from George Lincoln Rockwell?

A. Yes, I did.

page 447 } Q. And what did you do with this personal property and clothing?

A. This was turned over to Sergeant Schoup of the Arlington Police.

Q. And did you mark that in any way?

A. No, I did not.

Q. You just physically turned it over to him?

A. Yes.

Q. Would you recognize it if it was shown to you?

A. Shirt and T-shirt, yes.

Q. The rest of it you just gave to him, and you would not recognize it?

A. I would not.

Mr. Hassan: I have no further questions of this witness, Your Honor.

The Court: Cross examine?

CROSS EXAMINATION

By Mr. Harrigan:

Q. Doctor, you said that you conducted quite a few tests of bullets fired through various substances, is that right? Or, were present when they were conducted? You conducted them or were present?

A. I was part of the investigation team, yes.

page 448 } Q. Fine.

Now, in your experience in shooting through glass, is it common for a bullet to fragment as it goes through glass?

A. The majority of them will, yes.

Q. And, as a result of this fragmenting, would this often throw the bullet out of its trajectory?

A. The bullet no longer has trajectory once it begins to fragment.

Q. What I mean is, from the point where it fragmented

James Beyer

taking the windshield and going right straight up, that is where it was fired from?

A. That alignment is not as accurate as if it had not penetrated through glass.

Q. Well, is that the same to say there's some question when you do that?

A. Once a bullet begins to fragment, then it generally loses the original line of trajectory which the impact missile had.

Q. I see.

Now, this wound that Mr. Rockwell had, the chest, the thorax cavity, is that right?

A. That's right.

page 449 } Q. Which resulted in a massive hemorrhage in the chest is that right?

A. Loss of blood, yes.

Q. Would this effect his speech in any way?

A. He might have been able to speak for a few minutes.

Q. Well, few minutes being less than three, no doubt, would it? Because he couldn't live more than three. I think that's the testimony.

A. He would not necessarily lose his speech.

Q. All right.

Would it have knocked him unconscious, the striking power of the bullet?

Q. Would he be unconscious somewhat less than the three minutes before he died?

A. Well, the state of consciousness and time of death would probably approximate each other rather closely.

Mr. Harrigan: Thank you, Doctor.

The Court: Any redirect examination?

Mr. Hassan: No redirect, Your Honor.

The Court: Mr. Hassan, do you propose to introduce those fragments in evidence?

page 449-A } Mr. Hassan: If Your Honor please, I will offer them in evidence at this time.

The Court: I want to know if there's objection before we proceed.

Mr. Harrigan: Is he offering them for the fact that they were taken out of the body, is that what he's offering them for at this point? That's what the testimony is.

Mr. Hassan: Yes, I'm offering them as exhibits of fragments of shells removed from the body of George Lincoln Rockwell by Dr. Beyer and Dr. Enos as they testified.

James Beyer

Mr. Harrigan: If that's the testimony and that's the purpose, I have no objection.

The Court: All right.

Mr. Hassan: I don't intend to have any further reference to them at this time. I have some F. B. I. experts interested in testifying from them.

The Court: They will be admitted into evidence as 3A, B, and C.

(Whereupon, Commonwealth's Exhibits No. 3A, B, and C were entered into evidence.)

Mr. Hassan: If Your Honor please, the Jury has seen 2A through I. I would like them to have Exhibits 3A, page 450 } B, and C.

The Court: All right.

May Dr. Beyer be excused at this time?

Mr. Hassan: He may be, Your Honor.

The Court: You're excused, Doctor. Thank you.

The Jury may examine these now, if you wish to show them to them. However, I'm going to call a recess at this time, so you may wish to show them afterwards.

Mr. Hassan: Let's show them afterwards.

(Whereupon, a short recess was taken.)

Mr. Hassan: If Your Honor please, I think we can stipulate as to this map because it covers Dominion Hills. On the other side of Bon Air Park, defense desires additional space which we will stipulate to tomorrow from the tax map and tack it on tomorrow and stipulate for the purpose of examination of witnesses to this map of Dominion Hills and I would like to have this marked for identification as Commonwealth's Exhibit 4 and then we will make the other, Commonwealth's 4A and bring that in tomorrow sometime before we get to that area.

Mr. Morris: We stipulate for identification now and when we get the other, place them both in evidence.

Mr. Hassan: All right.

The Court: If that is admissible in evidence, I'll initial it now.

page 451 } Mr. Hassan: Just for identification now until we get the remainder.

Now, this will be 4A for identification.

Walter N. Schoup

The Court: I take it defense has no objection to it being exhibited to the Jury for testimony this afternoon.

Mr. Morris: Just for stipulation now and our map tomorrow.

Mr. Hassan: We are agreed on the area that there will be testimony about offered by the Commonwealth this afternoon. We will not be going into the area they have stipulated on. This is 4A.

(Whereupon, Commonwealth's Exhibit No. 4A was marked for identification.)

The Court: Call the Jury.

(Whereupon, the Jury was returned.)

Mr. Hassan: Sergeant Schoup, please.

Whereupon, WALTER N. SCHOUP, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

page 452 } DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Walter N. Schoup, County Police Department.

Q. All right.

Directing your attention to the event that occurred regarding George Lincoln Rockwell on the 25th day of August, 1967 in Arlington County Virginia, did you perform some services in connection therewith?

A. Yes I did.

Q. Now, did there come a time in those services when you had occasion to receive from anyone these envelopes which have been introduced in evidence as Commonwealth's 3A, B and C?

A. Yes, I received these from Dr. Beyer at Arlington Hospital's morgue.

Q. And was that at the time of the autopsy of George Lincoln Rockwell?

A. Yes.

Q. And did you attend that autopsy?

Walter N. Schoup

A. Yes I did.

Q. What did you do with these after you received them?

A. They were turned into our property room.

page 453 } Q. And since then, they have been in the custody of the property room?

A. That's correct.

Q. At the time that you were at the Arlington Hospital morgue did there come a time when you received the clothing and personal effects of George Lincoln Rockwell?

A. Yes I did.

Q. And what did you do with them?

A. I also turned those over to the property room.

Q. I would like to show you the property that was recorded in the property room as 23874 and ask you, sir, to examine those and tell us whether or not—

The Court: (Interposing.) Do not display it to the Jury.

By Mr. Hassan:

Q. (Continuing) Whether or not those are the clothes you received and personal effects?

Mr. Harrigan: May we approach the bench?

Conf.

11/28/67

* * * * *

Whereupon, Page 453, line 20, Bench Conference, should read:

Mr. Harrigan: I take it, at this time before he pulls all that stuff out of the bag, he's going to pull out the bloody shirt and all that, and I object to it because we've got the pictures and I object to it being introduced into evidence.

Mr. Hassan: If I don't introduce it, how can I discover whether it's exculpatory evidence?

Mr. Harrigan: On his bloody shirt—

Mr. Hassan: (interposing) The F. B. I. examines everything. You're going to want the experts testimony and if I don't bring them in and comment on them—are you going to stipulate they don't have to be shown to the jury but that they can be testified to?

Mr. Morris: It's our understanding, and I think Judge

Walter N. Schoup

Russell has made this ruling that if the Commonwealth had any exculpatory evidence it would be given to us.

Mr. Hassan: That isn't the law in Virginia.

Mr. Morris: I understood that was Judge Russell's ruling.

11/28/67 Mr. Hassan: That isn't the law in Virginia.
page 3 } It says he has to present it to the jury and the court if he has any but I don't know of any—but I'll present any that I've got.

The Court: With regard to that particular material it seems to me at this point you can have it marked for identification then it can later be referred to by experts if they need it in their testimony.

But at this point I see no reason to do it.

Mr. Hassan: You don't know what I'm going to offer, Judge.

It's going to contain a brown wallet containing miscellaneous cards and papers of George Lincoln Rockwell, a brown Buxton; and a pair of grey blue-pin pressed Big Mac trousers and while short-sleeved shirt, marked with holes and covered with blood and a Jerome man's 17-jewel wrist watch, silver in color with broken band; and a brown leather belt; one pair of Fruit of the Loom men's striped shorts; one white T-shirt, blood-stained and dirty; one white envelope from Arlington Hospital containing 2 \$100 bills, 3 \$2 bills, 1 \$10 bill, 4 \$1 bills, and a letter from J. Patler to "Dear Commander, headed confidential.

Conf. I'm going to offer them in evidence.

11/28/67 Mr. Morris: I don't see any relation to the correspondence, who sent it and who received it. That would really be objectional. I don't think that particular evidence should be—

Mr. Hassan: (interposing) Let's get rid of the jury.

Mr. Harrigan: I would like to argue each one of those items.

I fail to see the language in the letter, where it's helpful, and the some \$277.00 and a pair of undershorts—

Mr. Morris: All this stuff would be rather immaterial.

Mr. Hassan: It may well be, but it was examined by the F. B. I.

The Court: Well, is it not premature now to decide whether or not this material has any probative value?

Mr. Hassan: The letter has probative value.

Walter N. Schoup

The Court: Is it not sufficient at this point to have all these items marked for identification and have the testimony of *Sargeant* Shoupe on record to establish your chain of custody for them?

Conf. 11/28/67 Mr. Hassan: I'm going to introduce the letter page 5 } from Patler through him. I'm not going to only have it identified but I'm going to introduce it.

The Court: Perhaps we better retire the jury and argue that.

Let the jury retire.

The Court: Let the Jury retire.

All right, Mr. Hassan.

(Whereupon, examination of Sergeant Wal-
page 454 } ter N. Schoup proceeded outside the presence of
the Jury.)

By Mr. Hassan:

Q. Sergeant Schoup, would you show us item number one that you received from—that was taken from the body of George Lincoln Rockwell and turned over to you in your presence?

Mr. Harrigan: I object to what was taken from the body. The last question was what was taken from him.

I think Dr. Beyer testified that he couldn't identify many items which he took but he turned them over to somebody.

Mr. Hassan: I just had him testify that he just received them from Dr. Beyer.

The Court: The objection is well taken.

You didn't ask him whether it was received from Dr. Beyer. Your question just now put was it taken from the body or presupposes it was.

Mr. Hassan: He already testified that he was present at the autopsy.

By Mr. Hassan:

Q. Did there come a time when Dr. Beyer and Dr. Enos turned anything over to you in the nature of clothing and personal property?

A. Yes.

page 455 } Q. And did you observe where they obtained such items?

Walter N. Schoup

A. I can't say that I saw them taken from the body. They had already been taken from the body when I arrived.

Q. When you arrived they had been taken and then they were given to you?

Mr. Harrigan: I move to strike "they had been taken from the body". The tail end of his statement was "when I arrived".

He does certainly not know and he has no first hand knowledge about this and I move to strike that end of the statement.

The Court: Mr. Hassan, do you have any comment?

Mr. Hassan: I don't think it can be stricken. I don't think he can testify to it, but I don't think it can be stricken since we are not in the presence of a Jury and this isn't going to be read to the Jury.

The Court: Well, striking it is of no particular importance here but the objection is sustained.

If he does not know whether it was in fact taken from the body or not his representation to that fact would be hearsay.

Mr. Hassan: All right.

By Mr. Hassan:

page 456 } Q. Did you receive some things at the morgue
which were presented to you in your capacity as
a police officer of the Arlington County Police Department?

A. Yes sir.

Q. What were those items?

A. Item number one: brown wallet containing miscellaneous cards and miscellaneous papers of George Lincoln Rockwell. That item was released to Matt Koehl on 9-7-67.

Q. What about item two?

A. Item number two: one pair of gray blue pin pressed Big Mac trousers.

Q. Just lay them up there.

A. Item three: white short sleeve shirt with never iron label with holes and covered with blood.

Do you want them taken out of the envelope?

Q. No, just put the envelope up there.

A. Item number four: brown leather belt.

Number five: a Jerome seventeen jewel man's wrist watch, silver in color, with a broken stretch band.

Item six: Fruit of the Loom men's striped shorts.

Item number seven: white T-shirt, blood stained and dirty.

Walter N. Schoup

Item number eight: envelope containing money.
page 457 } That item also was released to Matt Koehl on
9-7-67.

Item number nine: Letter from J. Patler to "Dear Commander", headed "Confidential".

Mr. Hassan: I would like to have those items marked for identification and then have the defense examine them.

The Court: Let the Clerk mark them.

They would be 5A and B.

Mr. Hassan: And C, D, E, F, and G.

Mr. Morris: You might make note, Your Honor, that the clock is still running.

Mr. Hassan: And also that Mr. Harrigan wound it some. We don't know whether it's self winding or not.

Mr. Morris: The watch was running prior to the winding.

Mr. Hassan: In any self winding watch, movement or shaking it will wind it.

(Whereupon, Commonwealth's Exhibits No. 5A, B, C, D, E, F, and G were marked for identification.)

The Court: In order that we have the record
page 458 } straight:

The trousers is 5A, B is white shirt; C is the belt; D is watch; E is shorts; F would be the T-shirt, then; and G the letter?

Mr. Hassan: Yes.

The Court: Sergeant Schoup, of the seven items you produced, with the two additional items which were returned to Matt Koehl, was this all of the personal clothing and effects which were given to you?

The Witness: That's correct, Your Honor.

Mr. Hassan: If Your Honor please, at this time I don't intend to offer in evidence any item except item 5G (the letter) and I offer that—I will offer that through Sergeant Schoup.

Do you want to look at that item?

The Court: Is there objection?

Mr. Harrigan: No, Your Honor, because one of our objections is going to be to the contents of it so I think the Court will have to look at it to determine—I have no objection if the Court looks at it.

At this time, I'm going to object to it being introduced into evidence.

Walter N. Schoup

The Court: I'll look at it.

All right. I'll hear the objection.

page 459 } Mr. Harrigan: The first objection that we have to it is by the very nature of the letter. It is a photostat of some other letter. We would object on the grounds it is a photostat and secondly, there's no evidence in this record to show this letter was in fact taken from Rockwell. The only evidence in the record was that Sergeant Schoup has the letter. Thirdly, and this is probably more important than the next two objections, the letter is not dated so it doesn't have any date on it which would help refer the Jury or the Court to the particular day or time in which that correspondence was going back and forth. And fourth, there's nothing in the letter which would have probative value at all in the Commonwealth's case.

The fact that there is a letter to Commander Rockwell has no probative value unless there's something in the letter that is prejudicial.

Now, there is some discussion in the letter about various items which we contend certainly do not help the Commonwealth's case. They're showing in the letter that Patler was fond of Rockwell, that basically they had an argument and he wrote him some other correspondence.

Our position on the letter is and lastly on this, there's been absolutely no foundation that it came from page 460 } John Patler at all other than the signature on the bottom which is a "J", it looks like a "J" and the word "Pater, P-a-t-e-r".

The main objection we have is that I don't know what Commonwealth is offering it to show. I think that the little incidental things, collateral matters in the letter, are prejudicial to the defendant. Certainly, it is a hearsay document at the very best and as a hearsay document, I don't think it should be admitted.

That's all.

The Court: Mr. Hassan?

Mr. Hassan: If Your Honor please, the letter was a letter which was among the clothing and personal effects of the deceased at the time they were removed from him at the morgue at Arlington Hospital and turned over to the Police Department.

The letter on its face—the existence of the letter was in the personal property of George Lincoln Rockwell and is

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indicative of some importance to him and on its face refers to vicious correspondence and in addition, references to additional items that go to motive.

It refers to a specific instance which will enable us, with additional evidence, to establish the time of writing, and we expect to produce the letters referred to and the entire situation which stems from the deceased himself. This goes into the motive that we intend to produce an evidence of that existed between this defendant and this incident and it is a strong piece of evidence; it is an important piece of evidence, and it goes to a vital element, that of motive, and the fact that it was found at the time of the death in the personal effects of the deceased makes it of importance to me and to this Jury. It's the lead-into of an entire course of events of evidence that will show motive and therefore should be admissible as part of the elements of this crime that must be proved.

The Court: In the opinion of the Court, there has been insufficient foundation laid for its introduction at this time.

As I recall, the answer of Sergeant Schoup, he doesn't know whether this was removed from the person of the deceased or not. All he knows is that it was at the autopsy and these things were given to him by somebody else who would presumably know about it, but he does not.

Generally, I think the law to be that utterances of the accused prior to a homicide are admissible against him if they tend to show motive. Whether or not this page 462 } does show motive or not is questionable. It may be argued either way but it has not been proved to have been an utterance of the accused. It has not been identified as his. It has not been identified as having been on the person of Rockwell. It is undated.

So on the basis of the foundation thus far laid, the objection is sustained.

Mr. Hassan: I'd like to have an exception to that ruling at this time, Your Honor.

The Court: Yes sir.

Mr. Hassan, I take it you are not proceeding to offer in evidence at this time these—

Mr. Hassan: (Interposing.) At this time, I'm going to offer all of these for identification when the Jury returns.

The Court: I'm not sure I know what you mean by that.

Mr. Hassan: They have been marked in the absence of the Jury.

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The Court: I think it would be satisfactory just to recite to them what they are.

Mr. Hassan: Just recite what they are and that they have been marked for identification.

The Court: Well, as long as they're not dis-
page 463 } played to the Jury.

Just give them to him and go through that list.

Mr. Hassan: I wouldn't go through the list, Your Honor, on the items not presented; just through the list of those we have presented, for example, 5A is pants, 5B is a shirt, 5C is a belt—and all the way through 5G.

Mr. Harrigan: On that point I would object to reoffering them for identification in front of the Jury. I don't think that's necessary since the Jury can never view anything unless it's offered in evidence in any event and therefore they have no right to observe it prior to that time.

They have been identified as far as the Court is concerned. Now, if it comes a time when they are admitted, certainly the record is clear they were admitted then is the time to let the Jury see them. But to recite in front of the Jury what the evidence is without giving us the benefit of argument as to what is relevant and what is not relevant—well, I think most of it has no bearing at all.

The Court: Well, Mr. Hassan has a right, if he can establish their admissibility into evidence, to set up his chain of custody to them and if Sergeant Schoup were a witness who was not readily available to the Court, I would let him do
it subject to connecting it up.

page 464 } Since he is available, I will not permit it at this time but, Mr. Hassan, if you proceed later with the identification of these items so they can be admitted into evidence, I imagine you can recall Sergeant Schoup to establish custody.

Mr. Hassan: May I ask the Court one thing?

Even if the letter is established as being in the possession of Lincoln Rockwell at the time of his death, you will not allow it in without some further evidence?

The Court: I'm not prepared to answer that.

Mr. Hassan: I'm not prepared to argue it.

The Court: As far as I'm willing to go now is, I don't think there's been enough foundation laid. If you get to that point, you can argue it further then.

Walter N. Schoup

Mr. Hassan: Now, while the Jury is out, Your Honor, through Sergeant Schoup we might as well—we are going to offer certain other evidence, physical evidence, for identification.

23877 and 23905. You might as well have them brought in while the Jury is out. No, that's the one just brought in—874 was previously brought in—that was the plastic bottles—then, it's 23905.

23905, Your Honor, was the film that was—it was the slides which Sergeant Schoup took and had processed page 465 } which have already been admitted. I think that's the only matter that will be controversial. There will be pictures taken by Sergeant Schoup which I will introduce for identification purposes.

The Court: Are you ready for the Jury?

(No response from counsel.)

Let the Jury come in.

Mr. Hassan: May we approach the bench?

The Court: Certainly.

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page 5 } Whereupon, Page 465, line 10, Bench Conference, should read:

Mr. Hassan: Since you said *Sargenat Shoupe* was readily available and could be recalled, we would forego introducing any of the pictures he took, at this time, and will call for them later of the automobile at this property yard. The other pictures at the scene of apprehension I'll bring back later in connection with those pictures.

He took some autopsy pictures which I'm not going to offer; and another man took some pictures which I will call later. The only ones I'll comment on now are the ones of the automobile.

The Court: All right.

By Mr. Hassan:

Q. *Sargeant* Shoupe, I have—.

Conf. Mr. Hassan: Did you say I could identify these

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11/28/67 items as I indicated, Your Honor?

page 6 } The Court: No sir.

Mr. Hassan: I cannot.

DIRECT EXAMINATION (Continued)

By Mr. Hassan:

Q. Did there come a time, Sergeant Schoup, when you had occasion to take some pictures which you marked 3557777F?

A. Yes, I did.

Q. What were those pictures of?

A. Photos of the auto in which George Lincoln Rockwell was shot.

Q. Where were they taken?

A. At the property yard.

Mr. Harrigan: On that point, Your Honor—was he at the scene so he knew that? I was wondering if page 466 } somebody had told him that.

The Court: You'll have to establish it by cross examination.

Mr. Harrigan: All right.

By Mr. Hassan:

Q. Who was there with you when you took the pictures?

A. Detective Crickenberger on one occasion and on another occasion, Lieutenant Fouche.

Q. You took pictures on different occasions?

A. That's correct.

Q. What dates did you take pictures on?

A. August 26th and August 31.

Q. Would you look at those pictures and pick out the ones that you took on August 26th and tell us who was present at that time?

A. Detective Crickenberger.

Q. Are those the pictures that you took?

A. That is correct.

Q. Now, have you marked those pictures by number?

A. Yes, they're number one through four, with two of number three, one being printed darker than the other.

Mr. Hassan: If Your Honor please, I would like to have these marked for identification as Common-

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page 467 } wealth's 6A, 6B-1, and -2, they're the same thing;
one's lighter; and 6C.

(Whereupon, Commonwealth's Exhibits 6A, 6B-1, 6B-2,
and 6C were marked for identification)

By Mr. Hassan:

Q. Directing your attention to 6-1, sir, or 6A, I ask you
what that is a picture of?

A. It's a picture of the front of the vehicle from the left
front showing two holes in the windshield.

Q. And what kind of a vehicle is that?

A. 1958 Chevrolet.

Q. And was that vehicle identified to you?

A. Yes it was.

Q. Who identified it to you?

A. Detective Crickenberger.

Mr. Hassan: I'd like to offer 6A in evidence, Your Honor.

The Court: Is there objection?

Mr. Harrigan: I'd like to examine.

Mr. Hassan: You want to examine him or the picture?

Mr. Harrigan: The officer.

Just a couple of questions.

EXAMINATION BY COUNSEL FOR THE DEFENDANT

page 468 } By Mr. Harrigan:

Q. Did you go to the scene?

A. I did not.

Q. Where did you say you took the pictures of this car;
where?

A. The car, at that time, was sitting in the paint shop at
the Arlington County Property Yard. The doors—it was
locked with keys available only to the supervisory personnel.

Q. The only way you would know this was the right car,
unless the picture portrays the holes in the windshield as
they really were, is what somebody—

A. (Interposing.) Detective Crickenberger.

Q. That's not what I asked you.

Mr. Hassan: Then I object to the question because he al-
ready testified that he identified the car for him.

Mr. Harrigan: As what?

The Court: The objection is over ruled.

Walter N. Schoup

By Mr. Harrigan:

Q. You don't have any knowledge that this was the car at the scene at all other than what somebody told you?

A. That would be correct.

Q. All right.

page 469 } Or whether these two holes actually portray the two holes as they appeared at the scene or whether somebody had tampered with them?

A. The car was secure so that no one could get to it from the time it was put in the lot.

Q. Is that what somebody told you?

A. I would have to say yes.

Q. All right.

Mr. Harrigan: I don't think there's a proper foundation. I don't mind the pictures going in as long as somebody like at the time.

The Court: Do you object if they're admitted conditionally subject to being later connected up?

Mr. Harrigan: No, Your Honor.

The Court: I'll admit them then on that basis, or admit this one at least.

This is 6A, received in evidence subject to being connected up by later testimony.

(Whereupon, Commonwealth's Exhibit 6A was entered into evidence, conditionally.)

page 470 } By Mr. Hassan:

Q. Sergeant Schoup, what is 6B-1 and 2?

A. Showing the interior of the car, showing the front seat from the passenger side, showing a hole in the seat, with a hole in the top of the seat.

Q. And does it show anything on the seat?

A. A pipe and keys lying on the seat.

Mr. Hassan: I'm going to offer these in evidence, Your Honor.

The Court: Counsel seen them?

Mr. Harrigan: I've seen them, Your Honor.

Mr. Harrigan: Same objection.

The Court: All right. They, too, will be received conditionally.

Walter N. Schoup

(Whereupon, Commonwealth's Exhibits 6B-1 and 6B-2 were entered into evidence, conditionally.)

Mr. Harrigan: Only one other objection I have and that is, does he have any pictures left?

Mr. Harrigan: I think he can identify them page 471 } as to what is in the picture.

Mr. Hassan: We're going to offer them to the Jury.

Mr. Harrigan: I thought they were admitted with a condition upon them, being connected up and if they are not connected up it will be stricken and not shown to the Jury at this time.

The Court: I think the point is well taken.

By Mr. Hassan:

Q. What is that picture you have there?

A. This is a picture showing the hole in the rear seat, the right back rest of the right seat.

Q. Is there any individual in the picture?

Mr. Harrigan: This is what I object to. The picture speaks for itself if it comes into evidence.

The Court: May I see it?

Who's photographed in this picture?

Mr. Hassan: Detective Crickenberger.

The Court: All right.

Simply let him identify the picture or I'll identify it as a picture taken through an open door of a car showing a man pointing to something on the back rest of the seat.

Mr. Hassan: That's 6C.

I offer it in evidence.

page 472 } The Court: It will be received conditionally.

(Whereupon, Commonwealth's Exhibit 6C was entered into evidence, conditionally.)

Mr. Harrigan: Same objection.

Mr. Hassan: Now, if Your Honor please, since you have indicated that Sergeant Schoup may be released at this time subject to recall on the stand for more direct testimony at a later date in regards to other matters, I would like to show to the Jury Exhibits 3A, B, and C which were testified to by

John Hancock

Dr. Enos and Dr. Beyer and have been testified to by this witness as having been received by him.

The Court: You may.

Mr. Hassan: May Sergeant Schoup be excused at this time subject to recall.

Sergeant, you're excused subject to recall.

Mr. Hassan: I'd like to have Mr. John Hancock.

Whereupon, JOHN HANCOCK, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

page 473 } DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir, and your address.

A. John W. Hancock, 506 North Madison Street, Arlington.

Q. Directing your attention—by the way, where do you work, Mr. Hancock?

A. I'm retired from government but operate a Washateria on Wilson Boulevard.

Q. Directing your attention to the 25th day, on or about in the shopping center in the six thousand block of Wilson Boulevard?

A. I was.

Q. Will you tell us what occurred?

A. There was a man shot.

Q. Will you tell us what you observed or heard when you observed that episode?

A. I'm sitting at the front desk at a real estate office about three stores, three doors, from the Washateria and I heard two shots in quick succession. I got up out of the chair and started toward the door and about that time there was a loud thump on the roof.

page 474 } These are one-store buildings and I heard the loud thump on the roof and someone ran across the roof of the real estate office back of the corner of the shopping center building.

I came out the front door and no one was in the line of vision to where the man was laying.

I went out to the man. As I came up, I could see his car and two holes in the windshield.

Until that moment I had not been really sure he was shot

John Hancock

when I got to the man I could see what appeared to be bloodless punctures in his chest.

I felt of his neck. There was no pulse that I could feel.

I turned and ran back and called the police.

I came back out the second time.

I went out to him and took my time, a little more, and tried to find a pulse in his neck and recognized him the second time.

I returned back to the office again and called in again and told the police who I thought it was and also told them the direction that I thought the person I heard running across the roof was going.

I believe that's all I have.

page 475 } Q. Who did you identify him as, sir?

A. Well, I had seen Mr. Rockwell in the shopping center a number of times. He used my Washateria. I didn't know him except to see him. We say hello to all the customers but he looked different out there. Until I come back and took my time, I didn't recognize him the first time.

Q. Did you observe any other activity at the shopping center at this time?

A. There—oh, I had gone out the second time and as I came back, I noticed a lady standing down by the corner of the Washateria who was—I mean down by the corner of the shopping center who seemed excited.

As soon as I called that second time, I went down to her and I don't know if this is hearsay or not but she told me—

Mr. Morris: It's hearsay.

The Witness: She told me—

Mr. Hassan: You can't tell what you heard.

The Witness: When I observed the lady, I went back down to the shopping center.

Mr. Hassan: I have no further questions of this witness.

Mr. Morris: No questions, Your Honor.

page 476 } Mr. Hassan: He may be excused.

Mr. Harrigan: Yes.

The Court: Did you identify the lady to whom you talked?

Mr. Morris: If it please the Court, may we approach the bench on that?

The Court: All right.

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page 6 } Whereupon, page 476, line 8, Bench Conference,

Mr. Morris: Your Honor, that didn't come out on direct examination and there's no question on cross.

Presumably now you've decided to pursue this matter. Even if she is identified it would still be hearsay unless she was going to testify, and at this time we would request the court not to interrogate the witness on that matter.

The Court: What do you have to say, Mr. Hassan?

Mr. Hassan: The woman has been identified. I believe he does know her name, and she has been subpoenaed.

Mr. Morris: Then the testimony in her name would best come from her.

Mr. Hassan: We would probably get the best weight if we had it from Lincoln Rockwell, too.

Mr. Morris: We were under the impression when Doctor Beyer testified—

Mr. Hassan: (interposing) He's going to get some smart answers. The judge doesn't want me to—

Conf. The Court: I don't like to insert myself into 11/28/67 the case unless I'm left in substantial doubt.

page 7 } Mr. Morris: So are we.

Mr. Hassan: I'm going to object to the running quips of this little pip-squeak here.

The Court: All right now, Mr. Hassan.

I take it you object to me pursuing this?

Mr. Morris: We do, Your Honor.

The Court: All right.

Mr. Hassan: Commonwealth doesn't.

The Court: Mr. Hancock, you're excused and free to go.

The Witness: Permanently?

The Court: You gentlemen don't wish to retain him, do you?

Mr. Harrigan: No objection.

May we approach the bench?

The Court: All right.

Mr. Harrigan: Your Honor, we're going to ask for a hearing outside the presence of the jury to strike their evidence on the basis of a illegal lineup offered to the witnesses.

Mr. Hassan: If Your Honor please, it's getting late. Let's just excuse Miss Middleton and call her 11/28/67 back at 3 o'clock tomorrow.

page 8 } The Court: I propose to suspend at six today, anyway.

Ordinarily I would sit with you until later but I have a commitment tonight. It's ten minutes of six now.

Do you have any testimony you could put on in that time?

Mr. Hassan: It's the same objection to the rest of the witnesses that I have immediately available.

Mr. Harrigan: Same objection?

Mr. Hassan: The ones that are going to be available are the same questions of law.

The Court: All right.

Mr. Hassan: Maybe we can pursue it with one of the others in the morning but there are three that I think are involved in this anticipated legal question.

* * * *

page 480 }

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The Court: Does counsel wish to have a hearing, out of the presence of the jury, as indicated to me just before we recessed last evening, with reference to the Wade case?

Mr. Hassan: Of course, I don't think there is any issue at this time to have any hearing out of the presence of the jury.

I am going to object strenuously to any pre-trial of the complete testimony of any witness. If there is a portion of the testimony that there is a point to be raised on, I think it is essential that it wait until that question is asked and, as a matter of fact, I don't even intend to call that witness this morning.

If you recall, that witness that they raised the question on, before there was any question asked isn't coming back until after school this afternoon.

The Court: I thought you told me that this question would affect the testimony of all the witnesses who are likely to testify this morning and that is why I asked this question.

Mr. Hassan: No, Your Honor, it will not. I
page 481 } don't think it affects the testimony of this witness.

Mr. Harrigan: I would like the Commonwealth to proffer who his witness is going to be and then we will know by the witness whether we want to ask for a ruling on whatever testimony they have.

Mr. Hassan: I don't intend to do it, Your Honor. I don't think I have to, and there is no provision for this complete preview of every witness' testimony.

Mr. Harrigan: I think the Wade case disposes of that contention rather quickly.

The Court: If Defense counsel knows that a witness, who is to be brought in today to testify, has made a previous identification at a police line-up or show-up, then I will hear the matter out of the hearing of the jury in order to dispose of that point; but, I can't decide it in a vacuum, and unless someone advises the Court, the question exists with respect to some particular witness' testimony, I am not going to excuse the jury automatically.

Mr. Hassan: There are identifying witnesses who testified in many other things besides identification, and I don't think they are entitled to have a hearing on a question of law until the question arises.

If I don't ask a question of identification, it
page 482 } will never come up, and there was no line-up
and the Wade case doesn't apply unless there
was a line-up, and there was none.

I don't intend to have him know what every witness is going to testify to before they are called. I don't think they have that right.

Mr. Harrigan: There is no question in my mind, we are going to ask for a hearing prior to the time of the testimony of Becky Middleton—I think that is her name. Based on what we learned at the preliminary hearing, I think there were three or four other people that were there during that line-up—two of them were the barbers, which we are not too concerned about, and I think one or two other people, which we don't know what their names were, and I would like him to proffer if he intends to put on some evidence concerning identification if those people were present in the line-up.

We ask that in advance, but, obviously, if there is no witness, we can't have any hearing on it, so it depends on who he wants to call, I suppose.

The Court: Who is your first witness, Mr. Hassan?

Mr. Hassan: My first witness this morning is Detective John Wise.

page 483 } The Court: All right.

We will just meet the question as it arises with the testimony of each witness.

Will you call the jury?

The Sheriff: Yes, Your Honor.

Mr. Harrigan: If Your Honor please, obviously, we know that Detective Wise is not an identification witness, but in view of the fact if he gets into that area of the line-up, I think we will ask the Court and have Mr. Hassan proffer, before he gets into that area, what his testimony is going

John W. Wise

to be, so we, at least, will be apprised of our right to ask for a hearing.

Mr. Hassan: I am not going to proffer at any time or agree that there was a line-up. I deny that there was a line-up.

The Court: The Wade case, as I recall, is somewhat broader than merely a line-up. It also refers to whether, I think, in that case, they call it a show-up; merely, meaning the exhibition of the accused while in custody to eye witnesses.

As I recall, what the case stands for is a proposition that an identification made of the accused, under those circumstances, cannot be conducted in the absence of
page 484 } his counsel.

Now, I don't know whether that question exists, or not. Counsel mentioned it to me at a bench conference last evening. I can't rule on it in a vacuum. I have got to know if it was present.

Mr. Hassan: I deny there was any show-up in the absence of counsel.

The Court: If the question doesn't show up, then the question won't arise, but it will be up to the defense to raise it.

Mr. Morris: Then, the Court is aware of the fact that we are definitely going to raise that issue if it comes in, and it would be highly prejudicial, Your Honor. We would have to ask for a mistrial, which we don't want to do.

The Court: I don't know what I can do for you.

If you are entitled to a mistrial, you will get it. If anything prejudicial does come in through this route, we will, of course, strike any evidence that turns out to have been improperly given.

The burden, then, is going to be on the Commonwealth to be very careful that he does not present evidence which is tainted in any way under that doctrine without first giving
the Court the chance to examine it in the ab-
page 485 } of the jury. He assures me that will not occur.

Mr. Harrigan: What was the name of the witness?

Mr. Hassan: Detective Wise. He has not been sworn.

(Jury polled.)

Whereupon, JOHN W. WISE was called as a witness by and on behalf of the Commonwealth, and after having been first duly sworn, was examined and testified as follows:

John W. Wise

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. John W. Wise. I am a Detective, Arlington County Police Department.

Q. Directing your attention to on or about the 25th day of August 1967, did there come a time when you had an occasion to attend the autopsy of George Lincoln Rockwell at Arlington Hospital?

A. Yes, sir.

Q. When you arrived at the morgue, who was present?

A. Dr. Beyer and myself and a nurse.

page 486 } Q. Did you see the body of the deceased?

A. Yes, sir.

Q. What was the condition of the body when you first saw it?

A. He was on the table fully clothed.

Q. Did there come a time when the clothing and the personal effects were taken from the deceased in your presence?

A. Yes, sir.

Q. Were they given to you?

A. Yes, sir.

Q. Did you examine them?

A. Yes, sir.

Q. Now, I want to show you the Commonwealth's Exhibit 5-G for identification and ask you, sir, whether or not you can identify this as one of the items which were given to you at the morgue in Arlington County Hospital?

The Court: Don't say what it is.

By Mr. Hassan:

Q. Just yes or no.

A. Yes.

Q. What did you do with it?

page 487 } A. I gave it to Sergeant Shoup—examined it and gave it to Sergeant Shoup.

Q. Now, if Your Honor please, I am going to offer that into evidence.

Mr. Harrigan: We are going to object and I would like to ask him a couple of questions.

John W. Wise

Mr. Hassan: I still have further questions.

Mr. Harrigan: I understand that, but as long as you are offering it at this time.

The Court: All right.

You may cross-examine on the Exhibit.

Mr. Harrigan: All right.

VOIR DIRE EXAMINATION

By Mr. Harrigan:

Q. What time did you arrive at the hospital, Detective Wise?

A. I don't know the exact time that I arrived at the hospital.

Q. Who did you say was there when you arrived?

A. Dr. Beyer and a nurse.

Q. And, that is all?

A. Yes, I am sure that was all that was in there at the time when I walked in in the morning.

Q. Do you know Dr. Beyer, personally?

page 488 } A. Yes, I do.

Q. You didn't see Dr. Enos, then?

A. When I first walked in there, no, I did not.

Q. Or Judson—you didn't see him?

A. No.

Q. Did you see him later?

A. Yes.

Q. All right.

Now, what did you do? Did you go right in the autopsy room?

A. Yes.

Q. Did you stay in there?

A. Yes.

Q. Who took the personal effects off from the man that was there?

A. Dr. Beyer.

Q. Did you read everything that he gave you?

A. I don't think I read everything, no. I glanced through it—I looked it over.

Q. And, you looked that Exhibit over?

A. Yes, I did.

Q. You didn't read it, though?

A. Yes, I read it.

page 489 } Q. When?

John W. Wise

A. At the hospital when he handed it to me.

Q. What was the date on it, do you remember that?

A. No, I don't recall the date.

Q. Do you remember if there was one?

A. No—on the heading of the letter a date, no. There was a date mentioned in the letter, yes.

Q. The one you read there was a date mentioned in the letter?

A. Yes, sir.

Q. Are you positive of that?

A. Pretty sure.

Q. All right.

I don't have any other questions.

DIRECT EXAMINATION—(Resumed)

By Mr. Hassan:

Q. One further question: did you see what Sergeant Shoup did with that when you gave it to him?

A. Yes, sir.

Q. What did he do?

A. He put the date and his initials on the letter.

Q. I offer it into evidence.

The Court: Is there an objection?

page 490 } Mr. Harrigan: Yes, Your Honor, there is an objection.

The Court: The objection is sustained for the time being. I will give counsel an opportunity to argue this later, but I laid for it.

Mr. Hassan: I intend now to have him identify the other Exhibits for identification, which you did not allow me to present in the presence of the jury yesterday.

I don't know whether your ruling is still the same way.

The Court: I have not ruled on the question of relevancy of all of them, but the matter of identification was one reason why they were excluded. In other words, Sergeant Shoup yesterday could not testify that they actually came from the body of the deceased.

You may inquire of this witness as to that, if he is in a position to testify, he could cover that point.

Mr. Hassan: Not without examining him, Your Honor.

The Court: No, you may examine him.

John W. Wise

By Mr. Hassan:

Q. I show you Commonwealth's Exhibit No. 5-A and ask you to examine that and tell me whether or not page 491 } that is one of the items which you received at the morgue and gave to Sergeant Shoup?

The Court: Now, keep these generally out of the view of the jury.

By Mr. Hassan:

Q. You don't need to open it up, but you can look in the envelope. The idea is so that the jury cannot see them until they are admitted.

A. Yes, sir.

Q. You have examined Exhibits 5-A, B, C, D, E and F marked for identification, and you find them to be the articles that you received from Dr. Beyer and gave to Sergeant Shoup?

A. That is correct.

The Court: Are you in a position to testify, Detective Wise, that these items were actually found on the body of the deceased Rockwell at the time you saw it in the morgue?

The Witness: Yes, sir.

The Court: All right.

Mr. Hassan: And, you saw them removed from the body of Rockwell at the morgue?

The Witness: Yes, sir, I helped him.

page 492 } Mr. Hassan: You helped him remove it?

The Witness: Yes.

Mr. Hassan: I am going to offer these into evidence, Your Honor.

Mr. Harrigan: I would like to take them one at a time, Your Honor. I object to all of them, because I don't see what relevance any of them have, and I would like to argue them one at a time.

The Court: All right.

Let the jury retire.

(Out of the presence of the jury.)

The Court: All right, Mr. Hassan.

I take it you have moved into evidence 5-A, which is a pair of trousers?

John W. Wise

Mr. Hassan: Yes, sir.

Your Honor, I would suggest that before the Court hears the argument, to save time, the Court reads the cases of *Jarrell v. Commonwealth of Virginia*, 132, Virginia 551; and *Cluverius v. Commonwealth of Virginia*, 81 Virginia 787; and *Payne v. Commonwealth of Virginia*, 31 Grattan 855.

The Court: All right. 132, Virginia 551.

Mr. Hassan: And 81 Virginia 787 and 31 page 493 } Grattan 855.

May we recess while the Court reads them? They are brief cases.

The Court: All right.

Do you gentlemen want to recite me any cases on this point? I will look at them all at once.

Mr. Harrigan: No, Your Honor, not right now.

The Court: All right.

We will take a brief recess.

(Whereupon, a brief recess was taken.)

The Court: All right.

Mr. Harrigan?

Mr. Harrigan: The first item, I believe, is 5-A?

The Court: 5-A, pair of trousers.

Mr. Harrigan: And the shirt.

Mr. Hassan: The shirt is 5-B; belt, 5-C; watch, 5-D; shorts, 5-E; T-shirt, 5-F; and letter, 5-G.

Mr. Harrigan: Now, 5-A, the trousers.

Our objection to the trousers is apparently they are being introduced with the fact that the trousers were the trousers that Rockwell wore. We object to them, because they have no probative value in the case. I don't think they will help the jury decide anything, other than the fact, that they were simply the trousers that he wore that day.

page 494 } The shirt and the T-shirt, we believe that there is already evidence that has been introduced regarding the holes in the shirt and they were shown to the jury by virtue of the slides that we think that the probative value of the shirt and the blood-stained shirt would be prejudicial and that the introduction of that matter, simply for the sake of showing a shirt with some holes in it and blood, is merely cumulative, at best since they have already seen the shirt at the same time or very closely after this alleged event.

John W. Wise

Now, where the shirt has been, whether the holes were in it at the time or how many holes were in it when he had it on, there is no evidence of that at all; and, whether the shirt has been torn or the holes looked at or torn more, there is no evidence of that. Whether it has been tampered with, it has been shoved in and out of the bag, so I don't think the shirt should be admitted into evidence based on those grounds.

The belt—it is just a belt, apparently that he was wearing around his pants. Now, I don't think that has any probative value. We object to it as being extraneous material to clutter up the record.

The undershorts for the same reason. He had on a pair of undershorts. Our position is that they have no probative value at all.

The watch—we object to the watch. It doesn't help anyone to decide this case at all, other than the fact he had a watch on. If it would have stopped or broken at the time of the alleged event, and had a time on it, which was significant; perhaps, it would have some probative value to the jury, but this particular watch was running yesterday. Maybe, it is still running today. We would object to that as just being a collateral matter which has no bearing on any issue involved.

The Court: Mr. Hassan?

Mr. Hassan: He didn't address himself to G.

Mr. Harrigan: What was G?

The Court: The letter.

Mr. Harrigan: The letter, I understand that there had been a ruling that, at that point, there wasn't sufficient foundation.

The Court: I understand Mr. Hassan is re-offering it on the basis of the testimony made by Detective Wise, which identifies it as an item that was in the possession of the deceased.

I made notes of the points that you made when you argued it before, and they were these: the letter is a photostat. There was no evidence that it was taken from Rockwell's body. Now, that has been supplied by the testimony of Detective Wise. And, the next point you made was the letter is not dated, and, therefore, there is no way of connecting it to any time relevant to this case.

The next point that you made was that nothing in the letter has any probative value. Its contents have no proba-

John W. Wise

tive value in the case. And, finally, that there is no evidence that it was, indeed, Patler's letter, the signature not being identified by anyone, and that it is hearsay.

I take it those are still the points you make?

Mr. Harrigan: Those are still the points that we make, Your Honor, and on the probative value of the letter, Mr. Hassan made the point that the letter would indicate some sort of motive of malice and so forth. I think the reading of the letter indicates it is not that at all. It is conciliatory, if anything, and aside from the fact that there is no foundation that Patler wrote it, because it is a typewritten letter, a letter, at best, is conciliatory. It is not such an utterance, assuming there was a foundation that Patler uttered it, that would produce or show or have a reasonable inference of any motive.

This is especially significant when viewed from page 497 } the fact that the letter has absolutely no date on it. It could have been written two, three—two years ago. It doesn't have the original. It is merely a photostat.

We would also object on the fact that it is not the best evidence of what was in the original document. Certain things are crossed out on that letter—I thought they were, anyway. Certain things were crossed out. Perhaps, they were crossed out on the original; perhaps, they were not. So, we still maintain our objection under no foundation, and that the utterance, very possibly, would be so remote in time, that it has no connection at all with this particular case.

The Court: All right.

Mr. Hassan?

Mr. Hassan: If Your Honor please, I will lump them altogether for the standpoint of one argument. I think everything that is the personal clothing and property that is found on the deceased at the scene of the murder is a part of the *Res Gestae* and is admissible on that score, alone, and I think that A,B,C,D,E and F are in that category.

I had intended to examine the FBI reports. I said yesterday I thought they had been examined by the FBI, but as Mr. Harrigan was arguing, doubts arose in my mind. So, I am not now sure. Yesterday, I was positive—this page 498 } morning, I am not now sure that there will be further testimony on at least the shirt and T-shirt that was involved. But, as to the letter, the letter not

John W. Wise

only is part of the *Res Gestae*, being carried by the decedent, but it has two very important and admissible features.

First of all, I don't find those crossouts. Whoever typed it, like I am, if you make a mistake, you start a word and then you strike it out, and that is the only strikeout or only blockout there is, and that is in the third line of the second paragraph, and it is just a question of someone being as much in doubt as I am today about the FBI examination, is how you spell "their", whether it is one "their" or another "there" and then change your mind.

I see a dot on the "i" there, I believe, and then it is rewritten as t-h-e-r-e and you can read it through the strike-out. But, in any event, it says two things, one of which I will quote, which indicates previous difficulties between the defendant and the deceased previous to the time of the letter and, obviously, the letter is previous to the deceased, because the deceased had it on him, and there is ample law that all of that is evidence of motive and it says:

"Please be sure to return this letter with all other vile letters I wrote to you."

page 499 } I think that is sufficient to admit it as a case
there was a previous disagreement and we do
intend to show the previous disagreement and the follow-up
disagreement as to the date.

The first paragraph refers first to a specific event, which is susceptible of being testified to as of a specific date and would be sufficient dating of the letter.

Then, there is another matter mentioned, which has been held time in memorial as a sound basis for motive, and when these items are found on the deceased, they are doubly admissible, as I think you have found them in writing and orally in the three cases that I have cited to you: the Jarrell case, the Cluverius case, and the Payne case. In fact, there is quite a discussion in each of the cases as to the *Res Gestae* nature of this type of information, oral and written, and I believe that they are admissible.

At the moment, I am not prepared to say that any but G is going to be of probative value, but I think that G is going to be one item in a long chain of matters of extreme probative value and this we are entitled to at this point as a part of the *Res Gestae* and evidence of motive on two instances that are on the face of the letter.

The Court: With regard to the trousers, the

John W. Wise

page 500 } belt and the watch, they may be a part of the *Res Gestae*, but they appear to me to have so little possibility of probative value as to preclude their admission. If subsequent testimony should make them competent to prove any material fact in the case, they could be then admitted, because they have been sufficiently identified. Thus far, on the posture of the evidence, I see no reason to admit them. They don't prove anything.

The shirt and the T-shirt seem to me to be merely cumulative of what was shown in a much more striking way by the oral testimony of two doctors and the color slides, which Dr. Enos took. Both doctors were present. They showed the shirt and the T-shirt with the actual blood on them. They testified as to what was important about those shirts, what facts were sought to be proved by them, and that is considerably more probative than the items themselves, upon which the blood is now dried, and they have been subjected to considerable handling in the interim. So, it seems to me that they, too, have no probative value. To admit them now would be merely cumulative of facts already covered and not controverted at this point.

Again, if subsequent testimony should develop that they are competent to prove an important fact, they
page 501 } may be admitted, because they have been sufficiently identified.

As to the letter, I think one, and perhaps two of Mr. Harigan's objections have been overcome by the evidence to this point, but another remains, and it is a most important one, and that is the authentication of this letter as one coming from Patler. Whether it is actually evidence of any motive against Rockwell by whoever wrote it, may be a jury question. It does refer to past differences but appears to be most conciliatory, and at the time it was written, it appears to be a rather friendly letter. But, the Court could not conclude, from a mere view of this photostat, that it was an utterance of the accused in this case, and I do not think that sufficient foundation has yet been laid for its admissibility. So, the objections are sustained as to all of the Exhibits.

5-A through G, however, leave will be granted to the Commonwealth to again move their admission at later points in the trial, and, in accordance with the views which have been expressed.

Mr. Hassan: May we have a short recess?

The Court: All right.

Thelma Burgess

We will take a five-minute recess.

(Whereupon, a short recess was taken.)

page 502 } The Court: Are you ready for the jury?

Mr. Hassan: Yes, Your Honor.

Thelma Burgess.

Whereupon, *THELMA BURGESS* was called as a witness by and on behalf of the Commonwealth, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

A. Mrs. Thelma Burgess, 6026 North 9th Street.

Q. And, where is that in relationship to the shopping center in Dominion Hills?

A. It is right behind a parking lot that is on the end of a Goodwill building.

Q. Now, Mrs. Burgess, directing your attention to on or about the 25th day of August 1967, did anything unusual occur in the neighborhood of your home?

A. Yes, it did.

Q. Would you tell the jury and the Judge what you saw, if anything?

A. I was in my kitchen about 11:30-35 that morning.

page 503 } Mr. Harrigan: What morning was that?

The Witness: The day that this happened.

Mr. Hassan: I asked her, on or about the 25th day of August 1967.

Mr. Harrigan: I though you said, 26th. Excuse me.

Mr. Hassan: I said, on or about the 25th.

The Witness: And, I heard a shot and I stood up and looked out my kitchen window. Just at the edge of my yard, and just moments later, after the shot, I saw a man running over the building tops toward the end of the building that comes right to the edge of my yard.

By Mr. Hassan:

Q. Then what happened, if anything?

A. Well, he proceeded to come across the building, down

James Cummings

the corner, stepping on a brick wall that is there. And, my dog was in the yard and he saw this figure, and he charged toward the rear of the yard, and this man came down off the wall and jumped on the other side and ran across the parking lot.

Q. Then, what did you do, if anything?

A. I didn't do anything but lock myself in the house.

Q. Now, Mrs. Burgess, can you describe the man that you saw come across the top of the roof and down into the yard?

A. No, I can't.

page 504 } Q. You cannot describe him?

A. No.

Q. Do you have any recollection as to any features of the man, whatever?

A. No, I don't.

Mr. Morris: Objection, Your Honor.

The Court: It is moot.

Mr. Morris: All right.

Mr. Hassan: Thank you very much, Mrs. Burgess. No further questions.

Mr. Harrigan: No questions, Mrs. Burgess. Thank you.

The Court: May the witness be excused?

Mr. Morris: No questions, Your Honor. The witness may be excused.

The Court: All right.

You are excused and free to go.

(Witness excused.)

The Court: All right.

Mr. Hassan?

Mr. Hassan: James Cummings.

page 505 } Whereupon, JAMES CUMMINGS was called as a witness by and on behalf of the Commonwealth, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY Mr. Hassan:

Q. Will you please state your name, sir and your address?

A. My name is James Cummings and I live at 7350 Lee Highway, Apartment 202.

James Cummings

Q. What is your occupation?

A. I am a barber.

Q. Directing your attention to on or about the 25th of August 1967, where were you employed as a barber?

A. At 6031 Wilson Bouvelard, in Arlington.

Q. Did anything unusual occur there in the neighborhood of that barber shop on that day?

A. Yes, sir.

The Head of the Nazi Party was shot and killed in front of the shop.

Q. Would you tell the Court what you saw concerning that episode, if anything?

page 506 } A. Well, I was working at the time, and I heard a shot fired and I turned around and looked, and I looked out the door and I saw Rockwell's car bobbing back and forth and then I heard the other shot, and I ran outside and somebody said the man was on the roof that shot him.

Mr. Harrigan: I move to strike that statement, Your Honor.

The Court: Mr. Hassan?

Mr. Hassan: Well, I don't think there is any question but that that is already in evidence. It has already been testified that Mr. Rockwell himself pointed toward the roof, and I imagine that with the people that we have had testify to around there, that many things are said that nobody can identify.

The Court: Can you say, sir, who said it?

The Witness: It seems to me—

The Court: Not unless you are sure.

The Witness: I can't remember exactly which person said it.

Mr. Hassan: It is so close to the incident that it is all part of the *res gestae*.

The Court: I would consider it part of the *res gestae* if the speaker were identified at all, but under these
page 507 } circumstances I don't think it is sufficient.

Mr. Hassan: Your Honor, I would like to make an exception because the leading case is somebody shouted, "Stop," to a motorman in Richmond and a child ran in front of him, and they allowed that in. I can't give you a case, but it was admissible as a bystander. That bystander was never identified.

James Cummings

The Court: Do you gentlemen have any authorities on this?

Mr. Morris: I believe that the Court is absolutely right, that it is basically hearsay.

The Court: I sustain the objection and instruct the jury to disregard the remark.

By Mr. Hassan:

Q. Mr. Cummings, as a result of what you heard, without saying what it was, what did you do?

A. Well, the other barber and I ran around behind the 7-11 to see if we could see anybody, so we ran around behind the 7-11. We didn't see anyone so we ran down the corner of 9th Street and Livingston, and we split up there. And he went one direction and I went another, and he went down Livingston.

The Court: Who went down Livingston?

page 508 } The Witness: The other barber, and he went down Livingston Street, and I cut over. I went down 9th Street, and I got about a third of the way up there, and I saw somebody run across the corner of 9th and Liberty.

By Mr. Hassan:

Q. Then what did you do?

A. I stopped for a second and then I started running again, and I ran up the corner of 9th and Liberty, and I saw him go over the top of the hill. So I think I ran back and hollered. Well, I hollered back and told them I saw the man running. So I ran up to the top of the hill there on Liberty Street, and I saw him running down toward the park there, Bon Air Park, and I saw this young boy standing down there almost to the end of the street, and I went down and I waited until the guy got past him and went on through there, and then I ran down to the boy and asked him did he see him, and he said he did see him run by, and I asked him did he get a good look at him. And he said well, he had on dark clothes, he believed, and he believed he had on a hat, I believe. Warren Goodlett, I believe.

So we started on down to the end of the street, he and I, the young boy. And we saw Tom down there at the corner at the end of Liberty Street, and we told him

James Cummings

page 509 } that we saw him go through there and so we stood there and talked for maybe a minute or two, probably. And so Tom, he went on back. He was going to tell the police and tell them where we saw him go into the park at. The boy and I went down into the park and looked for a few minutes, but we didn't see anybody. But we saw the police all over the place, and we came on back.

Q. Can you describe the man that you saw running across 9th Street or running on Liberty Street?

A. Well, it appeared to me that he had dark hair and dark clothing and that is about all I could tell about him.

Q. Were you running as fast as you could run?

A. Well, when I was running up to Liberty, I was running as fast as I could and then I stopped.

Q. Why did you stop?

A. Well, it sounded like it was a good idea at the time.

Q. No further questions.

CROSS EXAMINATION

By Mr. Morris:

Q. When was the first time that you got a glimpse of the individual you saw running?

A. He was running across the corner of 9th page 510 } Street and Liberty.

Q. From your observation he ran straight down Liberty?

A. Yes, sir.

Q. Then you came up to 9th and Liberty?

A. Yes, sir.

Q. Did you see him at that time?

A. Yes, I saw him go over the top of the hill on Liberty Street.

Q. Then you pursued after him?

A. Yes.

Q. When you got to the top of the hill, did you see him again?

A. Yes, I saw him run down toward the vicinity of the park there.

Q. After you got to the top of the hill, did your vision ever leave the person who was running?

A. Well, I saw him when I got up to the top of the hill and then my vision did leave him. I looked over at the boy; I saw the boy also, and then I looked back and he was disappearing down into there.

James Cummings

Q. Was this before this individual got to Larimore Street and Liberty Street?

A. Well, Larimore is at the street that is down page 511 } at the bottom of the hill. Well, he was almost to Larimore Street when I saw him when I was on top of the hill.

Q. But he hadn't gotten beyond there?

A. Well, he was just practically to it, not quite to it yet.

Q. Then you had observed whoever this person was go into the park?

A. That is when I took my eye off of him out there.

Q. Then you observed him go into the park?

A. He appeared to go into the park there, but it happened so fast I don't remember exactly. I don't know. He went through there, but I couldn't say exactly where he went in, I guess.

Q. Are you of the opinion that he was not wearing a hat?

A. I didn't never remember seeing a hat.

Q. But he had on dark clothes?

A. That is the only thing I can be sure of.

Q. If he had a hat on, he had dark hair. Is that correct?

A. He had dark hair; I saw the dark hair.

Q. You don't know whether or not he had a hat on?

A. No, I don't.

Q. No further questions.

page 512 } The Court: Mr. Hassan?

Mr. Hassan: No questions.

The Court: Do you have some motion?

Mr. Morris: We would request that Mr. Cummings not be released, Your Honor. We would like to call him as a witness for the defense.

The Court: Would you be satisfied to leave him on call?

Mr. Morris: Yes, we would definitely be satisfied.

The Court: Mr. Cummings, you are subject to being on call for the defense. You are instructed not to discuss the case with anyone except counsel.

Mr. Morris: May we have the phone number?

The Witness: 528-9464.

The Court: All right. Mr. Cummings, you are excused subject to call.

Mr. Harrigan: Excuse me, is that down by Weber's?

The Witness: Yes, sir. I can be here within five minutes.

Thomas E. Blakeney

(Witness excused)

Mr. Hassan: Thomas Blakeney?

The Court: You were sworn as a witness?

The Witness: Yes, sir.

The Court: Have a seat.

page 513 } Whereupon, THOMAS E. BLAKENEY was
called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. Thomas E. Blakeney, 6031 Wilson Boulevard. That is my business address.

Q. What is your occupation, sir?

A. I work at Tom's Barber Shop.

Q. Where is that located?

A. 6031 Wilson Boulevard.

Q. Directing your attention to on or about the 25th day of August, 1967, did anything unusual occur there that day?

A. Yes, sir. Mr. Rockwell was shot right in front of the barber shop.

Q. Now, with relationship to that episode, will you tell the Court and jury what you saw, if anything?

A. Well, I saw Mr. Rockwell pull out of the parking space in front of the beauty shop, and he backed around directly in front of the barber shop, and I heard this
page 514 } loud noise. At first I thought it was a backfire,
and then I heard another loud noise, apparently a shot. And I heard glass break the second time, and I realized what had happened, and I ran out in front of the barber shop, and I looked both directions to see if I could see anyone. And I didn't see anyone.

I said, "Where did the shots come from?" And somebody says—

Mr. Morris: Objection, Your Honor. I think it is the same objection.

The Court: If you know who said it, you can tell.

The Witness: I think it was that fellow, his first name is

Thomas E. Blakeney

Jack, the mailman. I believe that that is who said it. I am not positive.

The Court: Objection sustained. Don't tell us what he said. Go ahead.

Mr. Hassan: Jack has already testified to this very point, Your Honor. That was Jack Hampton Hall.

The Witness: Yes, I believe his last name is Hall.

The Court: Objection sustained. Go ahead.

By Mr. Hassan:

Q. Now, as a result of what someone said, what did you do,

Mr. Blakeney?

page 515 } A. Well, myself and the other barber, Mr. Cummings, decided to try to see, you know, who had fired the shot, and we figured that they had come from the roof. So we ran around by the 7-11 and looked over this fence in back of the shopping center to see if we could see someone getting down. We had an idea that that was where he would be coming from, down in back of the shopping center, but we didn't see anyone there. So we figured that whoever it was must have jumped and gotten ahead of us.

So we ran back to 9th Street and we didn't see anyone there, so we split up on 9th, and I ran down Livingston Street and the other barber ran down Liberty. And I ran around the corner onto Liberty and 10th, and I was standing at the intersection, and Mr. Cummings and another, Warren Goodlett, ran down the hill. And I said, "Did you see him?" And he said, "Yes, he ran into the woods right there at the end of Liberty." And I said, "Well, I am going to call the police." And I ran over to the second house at the corner at, I guess, Larimore, and I called the police from there.

Q. What did you tell the police?

A. I told them that a man had been shot in the shopping center, Rockwell, and that a man had been seen running into the woods there, and the two fellows, Jim and
page 516 } this other boy, Warren, they had given me a description, you know, fairly, not vague. But some description of a dark haired fellow, medium size. Said he looked like Spanish Puerto Rican and had on a trench coat or a raincoat and yellow socks, I believe is what they said.

Q. This is what you told the police?

A. Yes.

Q. How many times did you call the police?

A. Just the once.

Robert Mack Coffelt

Q. Just the one time? Now, did there come a time when you saw the individual who was running?

A. No, sir, I didn't see him.

Q. You never saw him at any time?

A. No.

Q. No further questions.

CROSS EXAMINATION

By Mr. Morris:

Q. Mr. Blakeney, where did you make your telephone call to the police?

A. The second house from the corner there. Weber is the name of the people that live there.

Q. Is that on Larimore Street?

A. Yes.

page 517 } Q. Where was the telephone that you were using?

A. It was in the kitchen.

Q. Is that kitchen front on Larimore and Liberty?

A. No. Well, it is looking toward Liberty Street.

Q. Can you see the park from there?

A. I don't know. I don't know if you can or not.

Q. In the report that you got from one of your barbers and Warren Goodlett, it was a dark individual with yellow socks? And Spanish or Puerto Rican?

A. Yes.

Q. Thank you, sir.

Mr. Hassan: No further questions.

The Court: May the witness be excused?

Mr. Blakeney, you may be excused.

Mr. Harrigan: There is a possibility we may call him on another matter. If we may just have his telephone number.

The Court: Will you leave your telephone number?

The Witness: 534-9754. That is the barber shop.

Mr. Harrigan: Thank you.

(Witness excused)

Mr. Hassan: Robert Mack Coffelt.

page 518 } Whereupon, ROBERT MACK COFFELT was called as a witness on behalf of the Common-

Robert Mack Coffelt

wealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir?

A. Mack Coffelt.

Q. And your address, sir?

A. 433 North Manchester Street, Arlington.

Q. Now, directing your attention to on or about the 25th day of August, 1967, did there come a time when you were in the shopping center in Dominion Hills?

A. Yes, sir.

Q. Where were you there, sir?

A. In the laundromat.

Q. About what time of the day or night was that, sir?

A. Between 11:15 and quarter of 1:00 altogether, daytime.

Q. You were in the laundromat?

A. Yes, sir.

Q. Did there come a time when you saw George Lincoln Rockwell?

A. I would not have known.

Q. Did there come a time when anything unusual happened.

A. Yes, sir.

page 519 } Q. What happened?

A. Well, I was sitting with my back to the window. In other words, my back to the parking lot and reading a magazine as a matter of fact, and I should say too that you will recall it had been raining for several days and was quite wet, and I heard these two reports. And the first thought that occurred to me was that the car was backfiring, so I looked around over my shoulder just in time to see a car rolling in the parking lot and a man, a figure, apparently fall down. So the thought that occurred to me was that this person was pushing his white car and was trying to get it started, and it was rolling on over to him. And then I started to notice that it was rolling onto my own car which it did, and I went out to see what was happening.

I can stop there or go on with the rest of my story as you please.

Q. Go on, sir.

Robert Mack Coffelt

A. At that time I still didn't realize there had been gunshots, and I saw the man lying down. And I still thought he had been hit by his own car at this point, and I examined the back end of my own car, and at this point someone said and I noticed and said that there were, and I noticed that there were two holes in the windshield.

page 520 } Q. Did there come a time when you examined the man on the ground?

A. Not at any close distance, no, sir.

Q. Then what did you do, sir?

A. Well, I think I could say briefly that I stood around waiting until I could get my car moved and go on home.

Q. Thank you. I have no further questions of this witness.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Is there a bleach machine in that laundry?

A. I wouldn't have the faintest idea.

Q. No questions.

The Court: May the witness be excused?

Mr. Hassan: Yes.

Mr. Harrigan: Yes, sir.

The Court: You are free to go.

(Witness excused)

Mr. Hassan: Mrs. Kilpatrick?

The Sheriff: No answer, Your Honor.

Mr. Hassan: Mr. Stewart?

The Sheriff: No answer, Your Honor.

Mr. Hassan: If Your Honor please, Mrs. Kilpatrick was supposed to be here at eleven. If you will allow me to use the phone in the judge's office to see if we have any report.

Mr. Stewart was hunting and was supposed to have been back. I imagine he hasn't got his deer yet.

The Court: Do you have any other witnesses to go on with?

Mr. Hassan: Those are the ones that I was going to have this morning.

Let me make my telephone call.

Alma L. Kilpatrick

The Sheriff: We have no witnesses in the witness room, Your Honor.

The Court: All right, I won't call a recess.

Mr. Hassan: If Your Honor please, her husband called and said he was going to have to drive her and she can't get here until 1:30. I anticipated she would be here earlier at 11:00 o'clock.

The Court: You will be able to pick up at 1:30?

Mr. Hassan: Yes, I had a whole list scheduled, and we will be able to add that onto the list.

The Court: We will recess early for lunch. The jury is in the custody of the sheriff and excused for the luncheon recess. Court will recess until 1:30.

page 522 } (Whereupon, the luncheon recess was taken.)

The Court: Call the jury.

Mr. Hassan: Mrs. Kilpatrick.

Whereupon, ALMA L. KILPATRICK was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

A. Alma L. Kilpatrick, 6122 Brook Drive, Falls Church.

Q. Mrs. Kilpatrick, directing your attention to the 25th day of August, 1967, did there come a time when you were in the shopping area at Dominion Hill?

A. Yes.

Q. What time of the day was that, please?

A. About a quarter to twelve or around there.

Q. What did you observe, if anything?

A. I observed a man on the brick wall in back of the Goodwill who looked down—

Q. Where were you at that time?

A. My car was parked back there, and I had just started my car up when he came running across from
page 523 } the fence, and I looked at him right through the windshield and I had to stop my car. He ran around in back of my car and then looked up toward where

Alma L. Kilpatrick

Mr. Rockwell's body was later found, turned around and ran back over the fence.

Q. Can you give us a description of the individual you saw?

A. I believe that he was dark haired and he had either a brownish or a dark brown coat on, and he looked something like what Mr. Patler looks like.

Q. Where did you see Mr. Patler?

A. I saw Mr. Patler again in the courtroom.

Q. Now, when he went back past your car, where did he go?

A. Ran back over the brick wall.

Q. Over the brick wall?

A. Yes.

Q. No further questions.

Mr. Morris: May we approach the bench, Your Honor?

(Bench conference)

Conf.

11/29/67

* * * * *

Mr. Harrigan: There wasn't any prior reference to the Courtroom they were talking about, Your Honor, on this particular witness and I don't think it was this Courtroom, and if this was some sort of a show-up or line-up in another Courtroom, we have an opportunity to inquire into the circumstances under which that took place, and we would like to do that outside of the jury.

The Court: All right. I will let the jury retire.

Mr. Hassan: I might save you a lot of time. The answer I expected was on TV which was the previous Courtroom, and she was in the Courtroom on the bond reduction and she was in the Courtroom on the preliminary hearing, but her original answer before we went into Court was, "I saw him on TV."

Mr. Harrigan: We'll see.

The Court: Did you still want to inquire?

Mr. Harrigan: Yes.

The Court: All right.

The Court: Let the jury retire, please.

Alma L. Kilpatrick

(Out of the presence of the jury)

Mr. Harrigan: Ready, Your Honor.

The Court: Go ahead.

page 524 } *VOIR DIRE EXAMINATION*

By Mr. Harrigan:

Q. Mrs. Kilpatrick, you are wearing sunglasses, I notice.

A. Yes.

Q. Are they prescription?

A. Yes.

Q. Were you wearing sunglasses on that day?

A. No, I was not.

Q. Do you have a driver's license?

A. Yes.

Q. Is it a restricted license?

A. Yes, I have to wear glasses.

Q. Could I look at it?

A. Um, hum.

Q. Now, that driver's license indicates you are required to wear corrective lenses.

A. That's right.

Q. To drive an automobile. Is that right?

A. Right.

Q. And just what is your eye sight? What sort of defect do you have?

A. I don't know exactly. It is not very good, though.

Q. What isn't very good?

page 525 } A. Well, I mean I have to wear a strong lens.

Q. All right.

A. Would you like to look through them?

Q. Yes, ma'am.

Mr. Hassan: I am going to object to any of this before the jury. Mr. Harrigan is a member of the bar, but not an approved optometrist or ophthalmologist.

Mr. Morris: Well, the glasses will speak for themselves. I can't even see the Court through here.

The Witness: But I can see through them.

Mr. Harrigan: I would like the Court to take a look?

Mr. Hassan: I would object. The Court is not an ophthalmologist or an optometrist, either.

Alma L. Kilpatrick

The Court: I think the probative value is can she see without them, and I don't know how strong the probative value is.

By Mr. Harrigan:

Q. Did you testify you did not have your glasses on at the time?

A. I had clear glasses on. I didn't have sunglasses on.

Q. I thought you said you testified—

page 526 } A. No, I had clear glasses on. I did not have sunglasses on.

Q. What time did you arrive down there? I think you said quarter to twelve.

A. I probably got down there, gee, about 11:30, I suppose.

Q. And you observed this individual walk up and look up in front of the stores?

A. Yes, just going around, running around in back of my car. He didn't go very far.

Q. He went around in back of your car?

A. I had to stop my car because I was backing up.

Q. You were looking through the back window?

A. I turned around and looked at him, but I saw him first through the windshield.

Q. Okay. When you observed the individual that time, you say—

Mr. Hassan: If Your Honor please, I thought we were here on a particular point. I'm going to object to a rehearsed cross examination on the entire testimony of this witness and ask the Court to restrict this to the point which was raised in a conference at the bench.

page 527 } The Court: I will give him a reasonable opportunity to lead up to that.

Mr. Hassan: I think he is rehearsing everything, Your Honor, and I don't think he has a right to pre-examine every witness.

The Court: No, I won't let him do that. If this is going to lead directly up to the point which you have challenged in your objection, I will let you do it.

Mr. Harrigan: I think one of the issues in this particular type of hearing is an opportunity to observe in the first instance.

The Court: That is right.

Alma L. Kilpatrick

Mr. Harrigan: And I am testing her opportunity to observe in that instance and what she observed.

Mr. Hassan: I think that is part of the examination before the jury. There is no reason for that to be conducted out of the hearing of the jury.

Mr. Harrigan: I think the Wade decision covers that case.

Mr. Hassan: The Wade case does not settle that, Your Honor. If he wants to get into the Wade case, let's have an argument.

The Court: I will permit him to go ahead on page 528 } that basis as long as it isn't protracted to include a full cross examination.

Mr. Hassan: Exception, please.

By Mr. Harrigan:

Q. What was the full period of time that you say you observed this individual?

A. I couldn't judge that, maybe three minutes, maybe five minutes. I don't think it took him that long.

Q. Three minutes?

A. Maybe three minutes, maybe five minutes. I don't think it took him that long.

Q. All right.

A. It wasn't any long period of time because he ran very quickly out there, and he ran around.

Q. It could have been a matter of seconds?

A. It could have been. It seemed longer.

The Court: Let me interrupt you just a minute, Mr. Harrigan.

Mrs. Kilpatrick, will you straighten me out on the sequence of events?

You saw the man running in front of your car so that you saw him through the windshield?

The Witness: He ran toward my car. I was page 529 } backing up, and I saw him through the windshield. Then I had to stop my car because he ran around in back of it and looked up to where Mr. Rockwell's body was found, and at that time I didn't know that Mr. Rockwell was up there.

The Court: You mean he changed his direction? He was running toward the front of your car?

The Witness: Yes, and turned and ran around the back, and I stopped my car.

Alma L. Kilpatrick

The Court: He ran then down beside your car, around behind it?

The Witness: Right.

The Court: Changing his direction?

The Witness: Right, and then he turned after he had looked up, because I watched him.

The Court: Where was he when he turned behind your car?

The Witness: Just a little bit behind my car.

The Court: Then what did you do?

The Witness: I backed my car out.

The Court: What did the man do?

The Witness: He ran back over the little brick wall right beside me, right in back of it.

The Court: You lost sight of him at that point?

The Witness: Yes. Then I backed my car out
page 530 } and drove into Wilson Boulevard and drove up
the street, and I saw a man lying beside the car,
people out there, and I thought there was an accident. I went
on—

The Court: That is all right. You have gone as far as I needed. I just wanted to see what you saw when you saw him.

By Mr. Harrigan:

Q. Now, you described the man as dark haired?

A. Yes.

Q. Did he have a hat on?

A. No.

Q. You are positive of that?

A. I am positive.

Q. And you say there was a brownish or dark brown coat?

A. Yes.

Q. Now, was that a coat or a jacket?

A. I thought it was like a carcoat. It was flying behind him, but I thought that, and I have stated that before.

Q. What about pants? Did you notice that?

A. I thought they looked darkish; I am not positive.

Q. Now, you have made the statement that at that time that man looked something like Patler. Was that your statement?

page 531 } A. That is what I said. Yes, sir. I didn't say
positively.

Q. Are you testifying then that you cannot identify that man—

Alma L. Kilpatrick

Mr. Hassan: If Your Honor please, she isn't testifying to anything except what she actually said, and not what Mr. Harrigan wants to put in her mouth, so I object to that.

The Court: I think what you are doing now is a general cross examination.

Mr. Harrigan: All right.

After you left that area, you immediately pulled out and drove your car—

Mr. Hassan: I am going to object, Your Honor. He is going into a complete cross examination and not going into the point of his objection.

Mr. Harrigan: I am trying to get the sequence of events.

Mr. Hassan: You are trying to go over the direct testimony.

Mr. Harrigan: Who she talked with and who she first got in touch with chronologically.

The Court: Objection overruled.

By Mr. Harrigan;

page 532 } Q. Then I take it you pulled your car up and you started up Wilson Boulevard?

A. Um, hum.

Q. Now, after you saw this man lying on the ground, did you stop your car then?

A. I went around the corner, I don't know the street, and came around by the 7-11 market that is there and parked and then came back down.

Q. Did you talk to some police officer at that time?

A. No, I did not.

Q. How long did you stay in that area?

A. Maybe five minutes.

Q. Did you talk to anybody during that five minutes?

A. Yes.

Q. Who?

A. I talked to a real estate person there.

Q. A real estate person? Do you know that man?

A. I don't know him personally, no.

Q. All right, did you talk to anyone else?

A. I asked a woman who was standing there what had happened, and then there was a gentleman who had been coming across the parking lot who had seen what I had seen, and I talked to him. I don't know him.

page 533 } Q. Did you talk to a newspaper reporter?

A. No, I did not.

Alma L. Kilpatrick

Q. All right.

When you talked to those two, did you talk to anyone else at that time?

A. Not that I remember.

Q. All right.

Then where did you go?

A. I went up to the Drug Fair in Willston Shopping Center, and I called my husband and told him what I had seen.

Q. Did there come a time, then, that you talked to the police after that?

A. Yes.

Q. Now, when?

A. The next day, on Saturday. My husband wanted me to call them.

Q. Where did you talk to them?

A. They came in Drug Fair and met me, and then we went about half a block away and sat in my car and talked and then they went back to my house with me, and then I came down to the police station with them with my husband.

Q. That was the next day?

A. Um, hum. On Saturday.

page 534 } Q. I see. When you got down to the police station, did they show you any pictures?

A. They showed me many pictures.

Q. How many?

A. I don't know how many. I didn't count them, but there were a few.

Q. Did you pick any of those pictures up?

A. I thought I recognized a couple of people there.

The Court: Did they appear to be pictures of different people or all pictures of the same person?

The Witness: They were pictures of different people.

By Mr. Harrigan:

Q. When you say a couple of people there, how many people did you think you recognized?

A. Well, I think I recognized about two pictures that I might have seen around town, not people I know personally.

Q. You recognized two pictures around town, perhaps?

A. Perhaps. I don't remember the pictures they showed me. I didn't count them.

Q. Now, were any of these pictures of people other than the defendant?

Alma L. Kilpatrick

Mr. Hassan: She already answered that for the judge.

Mr. Harrigan: Your answer was yes, is that
page 535 } right?

The Court: She said she looked at pictures of
different people.

By Mr. Harrigan:

Q. All right.

Did they show you a picture of the defendant?

A. Yes.

Q. Was that in these ten or so pictures that you were
looking at?

A. I don't remember if they were within there or the ones
I saw down at the station.

Q. Did you look at pictures more than once?

A. They showed me some in the car.

Q. Now, they showed you some in the car coming from
where to where?

A. When we were parked in the car in the Willston Shop-
ping Center, and Detective Light and someone else was talk-
ing, too, showed me some pictures there.

Q. Was that the same day of this alleged shooting?

A. It was on Saturday.

Q. The next day?

A. The next day.

Q. He showed you some pictures at that time?
page 536 } A. Yes.

Q. How many?

A. I don't know how many.

Q. Did you pick any out at that time?

A. I don't remember that I did.

Q. Aside from whether you picked one out there at that
time, do you recall if one of the pictures you looked at at that
time was a picture of John Patler?

A. There was a picture of him in there.

Q. But you don't recall?

A. I didn't say that I positively identified him in that
picture.

Q. Was it after you looked at those pictures that they
brought you down to the police station to look at other pic-
tures?

A. That's right.

Q. Was that the time that you looked at eight or ten more?

A. I don't—

Alma L. Kilpatrick

The Court: I don't believe she said how many, did she?

By Mr. Harrigan:

Q. Well, approximately ten.
page 537 } A. I don't know how many.

Q. Did you look at pictures again after the first two viewings of pictures?

A. No.

Q. You did not?

A. No.

Q. Now, did there come a time when you were requested to come down to look at the defendant?

A. Yes.

Q. Do you remember the detective that asked you to do that?

A. Yes.

Q. What was his name?

A. Mr. Light.

Q. Detective Light. Did he pick you up that day?

A. No.

Q. Did you drive down yourself?

A. My husband drove me down.

Q. Did you know what you were coming down for?

A. Yes.

Q. What did Detective Light tell you you were coming down for?

A. Well, he just asked me to appear at a hearing.

Q. Did you know what for?
page 538 } A. Well, I assumed it was to see the defendant.

Q. Do you remember when that was?

A. I don't remember the exact date.

Q. How close in time was it to the time that you looked at these photographs?

A. I don't remember that. I never counted the days.

Q. I see.

Now, were you asked to sit in some particular location?

A. Yes.

Q. Where was that?

A. Well, we sat in one spot, and then I was moved back to another one.

Q. You sat in one spot? Whereabouts was that?

A. I sat back in the center of the courtroom.

Q. And was somebody sitting with you?

A. There was later, but members of the Nazi party came

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in and were seated beside me, so I was asked to move back another row, I believe, or two rows, and then a friend of mine was in here. So she came over and sat with me.

Q. All right. So where did you eventually wind up sitting in the courtroom, back several rows from the center?

A. I was sitting just about in the center.

page 539 } Q. Just about in the center?

A. And the second time when I came down, I was sitting way toward the back.

Q. Now, did you know who the police had arrested at that time? Did you know his name?

A. I knew his name. I had seen it in the news. Yes.

Q. Now, did you hear the judge call the case?

A. What do you mean, did I hear the judge call the case?

Q. Did you hear the judge say *Commonwealth* versus *Patler*?

A. Yes, of course, I did hear that.

Q. Then did you observe detectives bringing a man into the court?

A. Yes, the first time I did. The second time I believe he was brought in from the back. By that, I mean, in back of the judge.

Q. So at that point you knew they were bringing Patler in, is that right?

A. Yes.

Q. Now, did they bring anyone else in along with him, any other people that looked similar to him?

page 540 } A. I don't remember that.

Q. Did they ask you any questions after they brought him in the courtroom?

A. I don't remember whether they did or not. They did ask me if I had seen him, and I said no, I didn't see him because there were too many people around him, because the first time was when that attack occurred, and I didn't see anything and I was terrified then and left.

Q. In what direction did he come from, the front of the courtroom?

A. He came from the back of the courtroom at that time.

Q. Did he walk right by you?

A. Right by me.

Q. How many feet did he walk from you the first time you came down?

A. He walked down the aisle. How many feet is in the aisle?

Alma L. Kilpatrick

Q. All right.

A. Good heavens, I am not going to measure the aisle.

Q. But then you told him you didn't see him?

A. I didn't see him; there were too many people around him. I didn't see him that time.

page 541 } Q. All right. Did you remain seated where you were?

A. Yes, I did.

Q. And you remained there until they brought him back in the courtroom again?

A. No, we went to the back of the courtroom, and they cleared the courtroom, and I was standing in back of Mr. Light, and I stood there until they brought him back in again, but I didn't see him then.

Q. You didn't see him then, either?

A. I could see him, but not very clearly because there was too many people around.

Mr. Hassan: I don't know what this examination has got to do with the Wade case, Your Honor.

The Witness: And I am getting sick. I told Mr. Hassan I was very sick before I came down here. I have told you all I know. I can't tell you very much more.

Mr. Harrigan: I see.

The Witness: But I can't tell you very much more. That is all I know.

Mr. Harrigan: There are a few facts that I just want to make sure of.

The Witness: If I told you anything else, it would be untrue.

page 542 } Mr. Harrigan: All right.

Did there come a time in that courtroom where you did get a close look?

The Witness: Yes.

Mr. Hassan: That is immaterial, Your Honor. The only question that Wade raises was counsel present, and there isn't any question in anyone's mind was counsel present on each one of these occasions that she talked about. It is in court. That is the only thing that Wade provides.

The Court: I will let him complete his examination on this point.

Alma L. Kilpatrick

By Mr. Harrigan:

Q. After you got a close look what did you tell the detectives?

A. I told them that I wouldn't say no, and I wouldn't say yes. We only talked a few seconds.

Q. That is all you told them at that time?

A. I believe so. I can't remember every exact word, but I did say that I wouldn't say no, and I wouldn't say yes at that time.

Q. All right.

Did there come a time after that when you page 543 } changed this, that you wouldn't say no and you wouldn't say yes?

A. There came a time that I did say that I would say yes.

Q. When was that?

A. When I called from Washington state, and then I changed my mind again, because I don't want to be unsure of anything.

Q. So there did come a time when you decided to say yes, is that right?

A. Yes, and then I decided that I don't want—I am just not that sure, so I can't do that.

Q. So now you have decided, you say—

A. I have decided to say I can't say positively because I know that would be a crime, that would be terrible. I can't do that.

Q. Did they ever give you a lineup or show you the individuals of these other pictures that you said look similar?

A. No.

Q. They never showed you those pictures?

A. I never saw a lineup. You mean with the people in person? No, I never saw that.

Q. Did any of the detectives ever express his feelings regarding the guilt of this man to you?

Mr. Hassan: Objection, Your Honor.

page 544 } The Court: Overruled.

The Witness: No.

Mr. Harrigan: Were there any other witnesses with you that were supposed to be taking the same viewing?

The Witness: Not with me, no.

Mr. Hassan: Your Honor, he hasn't established there was any viewing. He established she attended a public hearing.

Alma L. Kilpatrick

I object to the use of that viewing. There hasn't been any viewing by any of the testimony.

The Court: She answered the question no, so it is mute.

By Mr. Harrigan:

Q. Now, Mrs. Kilpatrick, you say that you are ill.

A. Yes, I am.

Q. What is the nature of your illness?

A. Right now, I have got such a cold I can't see. That is all.

Q. Is that—

A. Respiratory. I feel like I can hardly breathe.

Q. Did you have a cold on the 25th?

A. I had a cold when I got back from Washington state.

Q. On the 25th of August, did you have any cold?

A. No, I am as well as you are.

page 545 } Q. I see.

A. It is awfully cold in Washington state.

The Court: Does that complete your cross examination?

By Mr. Harrigan:

Q. All the pictures that you looked at were all pictures with numbers on them of some sort like that, weren't they?

A. I don't remember if they had numbers on them or not.

Q. Did they have any names on the back, or did you ever look them over?

A. I didn't look on the back. They asked me not to.

Q. Who was the detective that was with you when you picked out those couple of pictures?

A. Mr. Light, sitting in my car, and another detective which I don't know his name. I don't remember.

Q. Could you describe the other detective, what he looks like? Would you recognize him?

A. I don't know that I would know, because I have talked more to Mr. Light than I have him which hasn't been too many times.

Q. That is all.

By Mr. Hassan:

page 546 } Q. I have a couple of questions.

What day was it, Mrs. Kilpatrick, that you called from Bremerton, Washington?

A. I don't remember.

Q. Was it this week?

Alma L. Kilpatrick

A. It was this week.

Q. This was when you had made your mind up that you identified Patler?

A. Yes, and then I decided that perhaps I could be wrong, and I don't want to positively say that.

Q. Did you return from there to testify in this case?

A. Yes, I did.

Q. Now, directing your attention to the 26th of August which was a Saturday. Prior to the time that you called Detective Light to meet him at the drug store in Willston, had you seen pictures of the defendant on TV?

A. I had seen one.

Q. No further questions.

The Court: Mrs. Kilpatrick, when you were present in court, there was only one occasion like that, wasn't there? That you were present in court?

The Witness: Two occasions.

The Court: You were in court on two separate occasions?
page 547 }

The Witness: Yes.

The Court: On each of those times, do you happen to know if Mr. Patler was present in court with his attorney?

The Witness: His attorneys were present, yes, each time.

The Court: Any further questions, gentlemen?

Mr. Hassan: Nothing further.

The Court: All right. Just stay right there for a moment.

By Mr. Harrigan:

Q. I have another picture. I was under the impression she was only there one time.

A. I was there twice.

Q. You were there twice?

A. I have been in the courtroom twice, yes.

Q. Was there some particular reason for coming back the second time?

A. Yes, because I had said that I hadn't seen the defendant.

Q. The first time?

A. Yes, because that is when that big commotion started.

Q. All right. When you say you came back the second time, you are referring to another day?

page 548 } A. Another day, yes.

Q. How many days later was the second time?

Alma L. Kilpatrick

A. I don't remember; I don't know; I didn't count the days.

Q. Did you tell the detectives that you didn't see the defendant the first time or you didn't get a good look at him the first time?

A. I said I didn't get a good look at him or didn't see him. It is the same thing, isn't it? I didn't get a good look at him.

Q. So you knew which one you were supposed to be looking at?

A. Yes, simply because I had seen a picture. So all they wanted to know was if I could identify this person, of course.

Q. Did they show you a picture before you went into the courtroom?

A. No.

Q. That is all.

The Court: All right.

Do you gentlemen wish to make any argument on this point now?

page 549 } Mr. Harrigan: Yes, Your Honor.

The Court: Before the jury is brought in?

Mr. Harrigan: Yes, Your Honor.

Mr. Hassan: May she be allowed to go? Step off the stand and sit outside.

The Court: Yes, if you would like to do that.

Mrs. Kilpatrick, you may wait in the witness room.

Mr. Morris: Your Honor, will the Court send a deputy with her or put her in a witness room by herself?

The Court: All right. She can stay with the officer in the hall.

Mr. Harrigan: Your Honor, as I understand the language in the Wade case, it states that that type of lineup or any type of lineup of a defendant, especially a one man lineup where in this case no other defendants were in the courtroom other than Patler. They called Patler. She knew that Patler was coming out, and she knew which one she was supposed to be looking at. The point in the Wade case says counsel has to be notified of an impending lineup or showup. The fact that counsel is there and is unaware of what is transpiring, I don't think is the test, because certainly counsel cannot protect anybody from an unfair advantage such as in the Wade case and Gilbert and Stovall cases unless he is apprised of what is going on.

page 550 } The language in these cases state that both

Wade and his counsel should have been notified of the impending lineup and counsel's presence should have been a requisite to conduct of the lineup. Absence is a knowing and intelligent waiver. So there are two people you are supposed to notify. You are supposed to notify the defendant of the lineup, and you are supposed to notify counsel of the lineup.

In this particular case, no one was notified of the lineup. The lady was brought down into the courtroom. The first time she said—I don't know what she said. Maybe we should get Detective Light in here. As a matter of fact, if he is here, I would like to call him after this argument. Whether she said she didn't recognize anybody or she didn't get a good look at the man she is supposed to be looking at. Now, that is not the type of lineup when somebody knows you are supposed to be looking at somebody to the exclusion of everybody else in the courtroom, and she failed to recognize him at that time or get a look at him. She was brought back to the courtroom again on a subsequent occasion for the same purpose, and this subsequent occasion was without benefit of a lineup or notice to the defendant or notice to counsel.

Now, in the Wade case, it sets out certain criteria which the Court should consider in determining page 551 } whether a lineup was in fact fair. Among those items are prior pictures. Whether she identified other people from pictures and clearly in this case, she identified or picked out at least two. She said a couple. Two other people prior to her courtroom identification and her courtroom identification is today that it looks like the man. I believe that is the language. Then she has testified that even after viewing the pictures, even after the two courtroom observations without benefit of notification to the defendant or to counsel, she then was still under the impression that she was not sure, and she went to Washington. At that point she changed her mind. Since then she has come back and since she changed her mind out there, she has again changed her mind.

So our position is that any identification that she has testified to in court or even similarities certainly is not based solely on her observations in the first instance. If that were true, she wouldn't have picked out the other two pictures of other people, presumably, and that the subsequent attempt on the part of the police to crystallize her memory by showing her pictures on two occasions. The first time she didn't pick out anybody, she said, and she said Patler's pictures was in there the first time. They showed her pictures again,

and she picked out two other people, and then in page 552 } a further attempt to crystallize her memory as to what Patler looked like, they took her to court on two occasions. She still balked at that. I think the chain of circumstances there are such that it so taints her testimony because of the prejudicial effect of the improper viewing which she had, that her courtroom testimony should be stricken.

The Court: Go ahead.

Mr. Hassan: If Your Honor please, I didn't quite hear the testimony as represented by Mr. Harrigan. I think I can briefly summarize it.

This witness was at the scene and became considerably upset when the individual ran by her. She saw him in the front. She had to stop backing her car because he was behind her, came back by her car and disappeared over a wall. She left, and then she saw the defendant on television. The next day, she called the police department because her husband thought she ought to talk to the police. She made an appointment and met with the police.

At that time, they showed her a handful of pictures. She didn't know how many. And then arranged for her to come to headquarters. She came down with her husband where she viewed some more pictures. Then she said that the first time in headquarters, she selected two pictures, that page 553 } all pictures were of different individuals. Now, she had already seen the defendant on TV and then she was in court. I never did get quite straight on whether she requested to go or police officer requested her to go. The question was we never flatly asked. It appeared like she had a desire to come back the second time, because she didn't see him too well in the first instance because of all the people around him.

Assuming all these facts to be true, and I think they are true, Mr. Harrigan leaves the TV viewing out and applies the case of the *United States* versus *Wade* which must be applied together with *Gilbert* versus *California* and *Stovall* versus *Denno*. These three cases set forth the Wade doctrine. There is absolutely nothing in any of the facts here or in any of the facts of any possible situation referred to by Mr. Harrigan where there would be a violation of the Wade doctrine. The Wade doctrine is pure and simply lineup. It sets forth four criteria, and the principal criteria is not notification to counsel but presence of counsel. It says in the first instance that counsel should have been notified of the

impending lineup and should have been present at the lineup. Counsel's presence is a requisite to the conduct of the lineup. Absence is a knowing and intelligent waiver. If counsel is not present at the lineup, evidence of identification of a suspect by a witness at the lineup is inadmissible and so forth. But the main element is the presence of counsel, not notification.

When you go to *Gilbert versus California* which is 87 Supreme Court, 1951, it again says that the Wade doctrine is absence of counsel, and when you go to *Stovall versus Denno* in 87 Supreme Court, 1967, you then come up with the surprising statement in the light of the whole case that counsel may appear and observe the lineup, but he has no right to interfere with it. His presence with the defendant is all that is essential.

There is no question about the presence of counsel in the courtroom. There is no question about the presence of counsel in a hearing or reduction of bond which, I believe, it she was asked, she would say it was a second appearance. There is no question about counsel when there were three or more, and I believe it was three of the witnesses sitting in the corridor of the police station when the defendant and counsel went out of the police station. The only way out they could go. This is not lineup; this is not showup. And there isn't any in these cases that talks at all about the showing of pictures. There isn't anything in these cases that talks about bringing the individual back to the scene. There isn't anything in these cases that prohibits other types of needed identification with the exception of taking them to a hospital, and that is referred to in the case of *Stovall versus Denno* which indicates that when that case comes where they have taken them into a hospital and possibly when it comes to taking them to a scene, that they might rule against it. But this happened before June 12th, and that case sets the retroactive date as of June 12th which, of course, was prior to the time here. But there's been no decision other than the Wade decision which has not one iota to do with the showing of pictures, not one iota to do with the public appearance in court or the public appearance in the police department, and there isn't any question from the testimony that this woman's identification has been uneffected.

She contacted the police; they didn't contact her. She contacted them from Bremerton, Washington, this week and returned because she said she was positive. When she got on

the stand, she wasn't that positive. I see no reason to suppress this evidence. It is a question of weight. It is a question for the jury to determine. It is a question for argument to the jury. I doubt if anyone's identification in this day and age is worthy of much weight when the defendant's picture has been on television a dozen times before they are ever talked to by the police. What weight can page 556 } you give to it? Certainly if you saw them on television, and they show you some pictures, it doesn't leave much weight, but it does not call for suppression. It calls for the intelligent use of our jury to determine the weight of identification based on the facts and the opportunities that were there, and not for the suppression of the testimony of the witnesses.

If you rule that you can suppress this witness' testimony, you might as well bar every other witness who saw anybody run, who saw the defendant at any time, who has also seen television, and this would make criminal law impossible.

Mr. Harrigan: I know Your Honor has read all of these cases, but as far as taking a suspect alone through a group of people or a courtroom, Wade was in a courtroom identification case. The case stands for all lineups, showups or whatever. When it says the pre-trial confrontation for personal identification may take the form of lineup, also known as identification of the suspect alone as to the witness as in *Stovall* versus *Denno*, and it says the criteria that the court is to consider and the court is well aware of the prior opportunity to observe the alleged criminal act, the existence of any discrepancy between any prior lineup description and the defendant's actual description, and here we page 557 } have exactly that, the identification of two people and a series of pictures which had Patler's picture in it which she did identify, and he had his picture all over TV, too, which she didn't bring up, and the lineup itself which she had on two different occasions. The first one where she didn't see him for one reason or another; the second time she came out with a maybe yes, maybe no type of identification which is next to saying nothing. Then she comes into court today based on that, and states he looks similar or something to that effect.

Now, it is not a question of weight. That has nothing to do with the Wade case. That has nothing to do with it. The Wade case, as I understand it, stands for a certain fundamental due process which requires certain rights be given, and if those rights are not given and they are not tough rights, all you have to do is notify the defendant and notify counsel

that we are going to have a lineup of some sort, so he knows what is going on. Now, that is not unreasonable, and counsel was there, but they have to be sneaky about it and clever and bring a person back twice. Now, that is fundamental due process. That is what these cases say and if there is a violation of that fundamental due process and as a fruit of that there is a courtroom identification, the whole identification should be stricken, and certainly I can't conceive page 558 } of any case which is shakier than this one from the witness' own testimony. I move that it be stricken.

The Court: The Wade case does not hold that even a lineup or showup conducted without counsel necessitates that the subsequent courtroom identification be excluded. As a matter of fact, that had been the holding, as I recall it, of the Circuit Court and the opinion of the Supreme Court said that they thought that the view was too restrictive and sent the case back to the trial courts to inquire into whether or not the courtroom identification was indeed, as I think they called it, the tainted fruit of the illegal lineup or whether it could be said to rest on a legal basis such as the actual observation of the accused at the scene of the crime and photographs which evidently they thought were perfectly all right. Any opportunity that the identifying witness had to observe the accused other than when he was produced while in custody for a lineup or a showup without counsel, and the implication was in that case, as I remember it, that if the identification in court could be said to rest on a more secure foundation and was not solely the tainted fruit of an illegal lineup or showup, then it might be presented to the jury just as would have been the situation before that decision.

page 559 } In this case, it seems to me that there has been a sufficient showing in the examination of this witness that she had an opportunity to observe the man who ran toward her car and behind it, and that she then made a rather equivocal identification from photographs. She had seen television. She got an indifferent view of him in the courtroom, and she appears to make what seems to be to me an equivocal identification of him today.

At no point did she make a positive identification, but what identification she makes, dubious as it is, appears to me to be the direct product of what she saw while she was sitting in her car. It is reasonably obvious from her testimony that she did not form this impression from her first view of Mr. Patler in the courtroom. If that had been where she formed her impression of him and is testifying that yes, this is the man

that I saw in the courtroom, and it is from my view of him in the courtroom, and this is the man I saw. I don't mean she said that in so many words, but if she said that, the Wade case might be applicable although I am not prepared at this moment to rule whether notice of counsel is susceptible or not. At this point, it doesn't appear to reach that point so the objection is overruled.

Mr. Harrigan: Exception.

page 560 } Mr. Hassan: If Your Honor please, since the argument is so fresh in your mind, we will be having our next witness after this witness who was sitting in the corridor of the courtroom when Mrs. Lane and the defendant were led up. I would like to have you rule on this at this time.

Mr. Morris: I am going to object. The best place for this testimony to come would be under oath from the witness in this court and not from Mr. Hassan to constantly testify. Now, he's been doing that for two days, testifying and showing these things, and the Court should stop him now.

The Court: Mr. Morris, I don't think he is trying to do that. I think he is trying to save time.

Mr. Morris: That is fine, but he shouldn't be testifying.

The Court: I don't think he is trying to testify. I think he was trying to shortcut the procedure.

Do you want to go ahead and take up that matter now? It seems to me that we better go ahead in view of the fact that I have ruled. I have ruled that this witness may testify. I think you might as well get through with it.

Now, before the jury comes in, they sent me a note raising to me what seems to be a valid point. Can't we see a diagram of the shopping area so that we will understand
page 561 } the testimony better. I assume that somebody at some times is going to produce a photograph or diagram.

Mr. Hassan: I have got photographs, but I had such an unhappy experience at the end of the testimony yesterday that I thought I better get through the testimony first and then let them see the photograph. I had it set up the other way, but now I thought I better change it around and now I am trying to get in the photograph.

The Court: Why don't you try to get the photograph in and maybe they will stipulate? I don't want the jury to be confused about it.

Mr. Hassan: If we get rid of the witness and take a short recess, I can get the photograph.

The Court: You don't have anything that you can show in connection with her testimony?

Mr. Hassan: We have pictures of that end of the whole shopping area including that end.

The Court: It seems to me if you are going to produce the photograph it might as well be available when she testifies so they know what she is talking about. She says a man jumped over a wall and ran through the parking lot.

Mr. Hassan: The pictures also gather considerable property at the scene which I can produce through the page 562 } FBI, and I have been waiting to get it in. We do have a series of pictures, 3577-A, which I can get in a very short recess which are of the scene and some of those are the ground level, others are at the roof level.

The Court: All right, we will take a five minutes recess.

Mr. Hassan: Let's get rid of the witness.

Mr. Harrigan: I am not going to run her in and out. I'm going to take a little time of her.

The Court: My thought, Mr. Hassan, was if they can get the photographs, they can see them in connection with this witness' testimony.

Mr. Hassan: All right, Your Honor.

The Court: We'll take a five minute recess.

(Whereupon, a five minute recess was taken.)

Mr. Hassan: I believe these pictures were all taken by Officer Taylor, Your Honor. I know two of them were. I think the third one was. If it wasn't, it was by Sergeant Shoup, both of whom will be testifying later, and I would like to have them marked for identification. I would like to have for identification Commonwealth 7-A, photograph number 3577, number 7, showing the deceased covered with a sheet and the shopping area from the hair stylist's to page 563 } Goodwill and the automobile up against Mr. Cof-felt's automobile. That is 7-A. 7-B, photograph number 3577-A-2, number 11, which shows an overall picture of the shopping area from the Goodwill Industries west to the 7-11. The ends of the building are right at the edge of the picture, and I do not believe it was taken on the 25th, but I think it was taken on the 26th. And 7-C, photograph number 3577-A-2, number 10, which shows the parking area at the end of the building where the Goodwill shop is located and the stone wall referred to by witness Kilpatrick.

The Court: Does the defense stipulate that these may be shown to the jury in connection with this testimony?

Mr. Harrigan: Yes, Your Honor.

The Court: Do you stipulate they may be received into evidence?

Mr. Harrigan: Yes, Your Honor.

The Court: All right, they will be received into evidence as 7-A, 7-B and 7-C.

(The photographs referred to previously were identified as Commonwealth's Exhibits Numbers 7-A, 7-B and 7-C and were admitted into evidence.)

Mr. Hassan: They are received also, Your page 564 } Honor?

The Court: Yes, sir.

Mr. Harrigan: 7-A is a view of which one, Your Honor?

The Court: 7-A is the one showing the body under a sheet. 7-B is the panoramic view of the front of the shopping center from 7-11 on the left to Goodwill Industries on the right. 7-C appears to be a picture of a back door and a brick wall.

Mr. Hassan: It is an end door. The back of the building is up on the back of the building. That is the end.

The Court: What end would that be?

Mr. Hassan: The Goodwill end.

The Court: All right.

Would you call the jury?

(In the presence of the jury)

The Court: Will you call Mrs. Kilpatrick?

Mr. Hassan: If Your Honor please, may I show these pictures to the jury before the witness is called for the examination?

The Court: All right. Just let her have a seat on the stand, if you would.

Ladies and gentlemen, counsel have agreed that you might examine these photographs in connection with page 565 } your request. They are photographs of the shopping center area.

Mr. Harrigan: I would just as soon she be out when he is explaining them, Your Honor.

The Court: Are you going to explain them?

Mr. Hassan: Just tell them what they are, the same as I did when I put them on the record, when we had them introduced.

Mr. Harrigan: There are certain areas which she is going

Alma L. Kilpatrick

to have to do by herself. We want to see if she can do it by herself.

The Court: I am sorry, we will have to ask you to go back.

Mr. Hassan: I show you Commonwealth's Exhibit No. 7-A which is a photograph of the deceased covered by a sheet showing the shopping center from the hair stylist's east to the Goodwill Industries and Commonwealth's 7-B which is a photograph showing a panorama of the shopping center from the Goodwill Industries west to the 7-11. The ends of the building are at the edges of the picture. And the Commonwealth's 7-C which shows you the end of the building at the Goodwill Industries, the stone wall and the parking area referred to by this witness as the east end of the shopping center.

A Juror: Where is the hair stylist's?

page 566 } Mr. Hassan: Here is the 7-11, the barber shop, the hair stylist's, the Goodwill.

A Juror: The deceased was where?

Mr. Hassan: This picture will show you where the deceased is, in front of the hair stylist's.

The Court: Mr. Hassan, is it correct that the Goodwill is at the east end and the 7-11 is at the west end?

Mr. Hassan: That is correct, Your Honor.

Whereupon, ALMA L. KILPATRICK, resumed the stand, having been previously sworn, was further examined and testified as follows:

The Court: Have you completed your direct examination?

Mr. Hassan: Yes, Your Honor. I may have some redirect examination after Mr. Harrigan gets through.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, Mrs. Kilpatrick, this individual that you saw—about what time of the day was it that you saw him?

A. Oh, I should say about quarter of twelve, something like that. I don't know the exact time. It was around that time.

page 567 } Q. As I understood your testimony, you were within your car?

A. Yes.

Q. Were the windows up or down?

Alma L. Kilpatrick

A. They were up.

Q. This individual, you first saw him when he walked in back of your car?

A. When I first saw him, he appeared on the little brick wall.

Q. I show you Commonwealth's Exhibit 7-C. Is that the wall with the tree all around it? (Indicating)

A. Yes.

Q. Was that tree around all over the top of the wall at that time? (Indicating)

A. I don't believe so. No.

Q. It wasn't?

A. It looked rather clear. I could see the wall clearly.

Q. You don't recall the tree then, is that your testimony?

A. I know there is a tree there. I have seen it since because I have gone back and looked, but I don't believe that there was that much foliage on it.

page 568 } Q. I think the record indicates this picture was taken the next day, is that right, or the same day?

Mr. Hassan: I don't know whether it was taken the same day or the next day, and I don't know that it is all of the wall, either. We will have the man on here to testify as to that and the other pictures.

Mr. Harrigan: Is that the same day as the other pictures were taken?

Mr. Hassan: I don't know. These two appear to have been taken the next day. I don't know which date this one was taken. Has that got an "A-2" on the back of it?

Mr. Harrigan: A-2.

Mr. Hassan: Let me see if I can find out.

Two definitely were taken on the 26th, the view on the east end and the view looking northwest, and I believe the other one was taken on the 25th.

Mr. Harrigan: Is this one the 25th?

Mr. Hassan: I believe that one is the 25th and the other two are the 26th.

I am sorry. I would have to have both these experts in here.

The Court: Why don't you establish that when you get the photographer on the witness stand?

page 569 } Mr. Hassan: I expected to do that, Your Honor.

Alma L. Kilpatrick

By Mr. Harrigan:

Q. All right. In any event, directing your attention to 7-C again. Do you recollect that tree being there covering that wall at that time?

A. I don't remember the foliage being that heavy. I never looked at the tree that closely.

Q. Now, which side of the tree did you see this individual? On the side where you can see the wall or on the side in back of the leaves?

A. Right at the corner I saw him appear there.

Q. Would you hold that picture up and show the jury where you are referring to?

A. Right here (indicating).

Q. That would be back of these leaves (indicating)?

A. By the wall. But I don't recall all the leaves there, but I did see him appear coming down and go beside my car and in back.

Q. I notice you wear glasses. Are you required to wear them driving?

A. Yes.

Q. Is that a prescription lens you are wearing now?

A. Yes.

page 570 } Q. I would like the jury to look through the glasses, Your Honor, to see the strength of the glasses.

Mr. Hassan: Objection, Your Honor. She said, Mr. Harrigan, she was not wearing those glasses but clear glasses on the 25th of August.

The Court: Sustained.

Mr. Harrigan: Are those the same prescription as the other glasses?

The Witness: Yes.

Mr. Harrigan: I renew my request, Your Honor.

The Court: Sustained.

Mr. Harrigan: Do you have the clear glasses with you?

The Witness: No, I don't have.

Mr. Harrigan: I except to that, Your Honor, on the grounds that the glasses, I believe, since they are the same prescription will show a major distortion, that they are thick glasses.

The Court: Without expert testimony, I don't believe any of us are in a position to say how good her vision is with glasses if she was, in fact, wearing her glasses that day. It is how well she sees with them, not how strong they are that counts.

Alma L. Kilpatrick

Mr. Hassan: I would like the record to show page 571 } that if the jury looks through them and if they didn't have the same eye condition she has, everything would look blurred, and they could not tell anything by looking at them. If every one of them was 20-20, they would all be blurred, and they wouldn't think she could see anything. The doctor said this is the prescription that she is supposed to wear.

The Court: Your exception is noted. Go ahead.

By Mr. Harrigan:

Q. When was the last time that you saw your eye doctor, Mrs. Kilpatrick?

A. Probably about ten years ago. I haven't had any lens since then. I have had new glasses since then.

Q. Ten years ago?

A. About ten years ago.

Q. Are those glasses very strong?

A. They are strong to me. I can see out of them perfectly.

Q. In view of the length of time between the doctor, I renew my request, Your Honor. She hasn't seen an eye doctor for ten years, and the glasses are a little strong. Just to demonstrate to the strength of the glasses. It has no bearing on how well she can see. She's already testified she page 572 } see with them, but I think it is a question—

The Court: If that is so, then I don't see that they have any probative value at all. Objection sustained.

By Mr. Harrigan:

Q. All right. Exception on the same grounds.

When you were observing this individual, you weren't aware of anything wrong in the shopping center at that time, were you?

A. No.

Q. After you observed him, you drove your car out and started up Wilson Boulevard?

A. That's right.

Q. At that time you observed something going on in the shopping center?

A. That's right.

Q. Now, did you talk to any police officers at that time?

A. No, I did not.

Alma L. Kilpatrick

Q. Did you stop at the scene?

A. Yes.

Q. During the whole time you were stopped at the scene, did you talk to any police officers?

A. No.

page 573 } Q. Did you leave the scene then?

A. Yes.

Q. Where did you go?

A. I went to Drug Fair in the Willston Shopping Center to call my husband.

Q. All right.

Now, did there come a time when you did call the police?

A. Yes, the following day.

Q. Did they bring some pictures up to your house to look at?

A. I looked at the pictures in the car.

Q. Did they come up to your house?

A. Later, after we had talked in the car.

Q. And—

A. And then we all came down to the police station.

Q. Now, while you were at the house how many pictures did they show you?

A. They didn't show me any in the house.

Q. I am sorry. Where was the car that you were in looking at them?

A. In the Willston Shopping Center in my car.

Q. I see. Was that the next day?

page 574 } A. That was the following day, on Saturday.

Q. All right.

Now, when you were in that car at the Willston Shopping Center, how many pictures were shown you?

A. I don't know.

Q. Do you have some sort of guess?

A. Maybe eight, maybe ten.

Q. You did not pick any picture out at that time?

A. I picked out a couple of people that I thought I recognized, that I might have seen around somewhere.

Q. Now, you picked out two pictures at that time?

A. I believe so, that I might have seen around somewhere or ones that looked familiar to me.

Q. Now, neither one of those pictures were of the defendant?

A. No.

Alma L. Kilpatrick

Q. Is that right? Now, when you say you picked out two pictures, you might have seen around somewhere, what do you mean by that?

A. I might have seen them walking in a store somewhere or walking around somewhere. The pictures just looked familiar, of people I might have seen.

Q. Did they ask you to pick out pictures of page 575 } people that you knew?

A. No, they just asked me what looks familiar to me, if anything looked familiar to me.

Q. Who was that detective?

A. Detective Light, and there was another detective with him, but I don't know his name.

Q. Would you describe him, please?

A. I can't really other than he was about medium height.

Q. Have you seen him since?

A. I have seen him in the courtroom once or so. I don't believe I would recognize him.

Q. Now, this individual that you saw. Did it appear to you like he was trying to head across Wilson Boulevard?

A. No.

Q. Was he heading in that direction initially?

A. He was headed toward and around the rear of my car and then he turned and ran back over the fence, but it would have been toward Wilson Boulevard. Yes.

Q. Was there a gentleman walking up at that time?

A. Yes.

Q. Do you know Mr. Stuart?

A. No.

page 576 } Q. All right. This man that was walking up—
did you have occasion to talk to him?

A. Yes.

Q. Was it an elderly gentleman?

A. Yes, rather heavy set.

Q. Now, did you have occasion to make arrangements with the police to come to court to view John Patler?

A. They just asked me to come down on one occasion, and the next time I came down—

Q. Just answer my question, please. You did make arrangements to come down, is that right?

A. I told them I would. Yes.

Q. And you did come down?

A. Yes.

Q. Where were you seated in the courtroom?

Alma L. Kilpatrick

A. About the center of the courtroom.

Q. Did you hear him call the case at that time?

A. Yes.

Q. How far were you from the aisle?

A. I don't know; I didn't measure the aisle. I was sitting right on the edge of the bench.

Q. Right on the edge nearest the aisle?

A. That's right.

page 577 } Q. All right. Now, did you hear them call the Patler case?

A. I believe so. Yes.

Q. Were you aware that the man that you were supposed to be looking at was coming out of the back room?

A. Yes.

Q. Were you watching that direction?

A. I didn't turn around, no.

Q. Did somebody come out of the back room?

A. Someone came out of the back room.

Q. How many?

A. I don't know how many.

Q. Did they walk by you?

A. Yes.

Q. How many walked by you?

A. I don't know.

Mr. Hassan: If Your Honor please, she already answered that she didn't know how many. If she didn't know how many came out of the room, how could she know how many walked by her? I'm going to object to this harassing of this witness.

The Court: Overruled.

By Mr. Harrigan:

page 578 } Q. How many people walked by you?

A. I don't know. I didn't count them.

Q. Were you looking?

A. I turned to the side and looked just as the commotion started. This was the first time, and then I just collapsed in the seat because I was so scared. I don't know how many people came out.

Q. All right. At that time you did not observe anyone that you recognized, is that right?

A. That's right.

Q. Did you tell the detectives that at that time?

A. Yes, I did.

Alma L. Kilpatrick

Q. Then they requested you come back to court another day and take another look, did they?

A. They didn't exactly request it. I volunteered it.

Q. Good, and how many days after the first observation did you come back again?

A. I don't know how many days. I didn't count them.

Q. Let me ask you this. Was it as much as a week?

A. It could have been a week; it could have been two weeks.

Q. You have no idea?

A. No, I don't have.

page 579 } Q. Now, the second time you came back, did you know what you were supposed to come back for at that time?

A. Yes.

Q. Where did you sit the second time?

A. I sat on the opposite side of the courtroom toward the back on the aisle seat again.

Q. In the aisle seat?

A. Um, hum. Right close to the aisle.

Q. Did you hear them call the case again? This was a bond hearing or something, wasn't it?

A. Yes.

Q. Did you hear them call the case again?

A. I am pretty sure that I did.

Q. Were you aware of what direction you were supposed to be looking?

A. Yes.

Q. What direction was that?

A. I was told that he would come out from in back of the judge.

Q. Who told you that?

A. A detective in the corridor, because he was supposed to come out of the elevator beside me, and then he didn't. He said maybe they brought him around from the back.

Q. Were you watching this elevator?

page 580 } A. Yes.

Q. They told you he wasn't going to come out of there, so stop watching. Is that right?

A. That's right.

Q. Then they told you he was going to come out of the back?

A. Yes.

Alma L. Kilpatrick

Q. Now, how long were you in the courtroom that day?

A. Not very long. I left and went down to get my car because he didn't appear until 1:30.

Q. Then they told you he wasn't going to be there until 1:30?

A. That's right, and so I came back again.

Q. So you weren't even looking for anybody else in the courtroom, were you?

A. No. Who would I be looking for?

Q. I was just wondering.

Did you come back at 1:30?

A. That's right.

Q. Did they tell you that this man was going to be there at that time?

A. That's right.

page 581 } Q. Which door did they tell you he was going to come out of?

A. They didn't meet me at that time, and I don't remember. I believe it was the back.

Q. He was the only one that came out?

A. Yes.

Q. Did you look at him at that time?

A. Yes.

Q. What did you tell the detective then?

A. I told them that I wouldn't say yes and I wouldn't say no.

Q. Now, Mrs. Kilpatrick, you have a cold today, don't you?

A. I have very much so.

Q. Mrs. Kilpatrick, are you an alcoholic?

A. No.

Q. Do you have an alcoholic problem?

A. Yes, I have had.

Q. You have had?

A. Um, hum.

Q. Do you drink now?

A. No.

Mr. Hassan: If Your Honor please, I don't think it is material as to whether she drinks now or doesn't drink now. I think the question is if he wants to go into that type of thing, was she drinking on that day or is she drinking today or at no other time.

The Witness: I wish I were.

The Court: The objection is well taken, Mr. Harrigan.

Alma L. Kilpatrick

Mr. Harrigan: All right, Your Honor.
That is all.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Mrs. Kilpatrick, did you have to take an eye examination to get your driver's license?

A. I don't remember whether I did or not.

Q. Does it have a restriction on it?

A. Yes, it does have.

Q. May I see that, please?

It is a Virginia driver's permit, is it not?

A. Yes, sir.

Q. Do you recall whether or not you sat in a room and looked at the eye chart?

Mr. Harrigan: Your Honor, I object to what she recalls.

It is his witness, and he can ask her questions,
page 583 } what happened down there, but as to leading
her as to everything that happened, I object to
that. I think that is a leading question.

The Court: Sustained.

By Mr. Hassan:

Q. You obtained that driver's license with a restriction on the 28th day of March in 1966, didn't you, Mrs. Kilpatrick?

A. I don't know the date on it. It is good until '69, I believe.

Q. May we have that and show it to the judge and let him announce what the date was?

The Court: Let her read that.

By Mr. Hassan:

Q. Do you want to read the date it was issued to the Court?

A. 1966. It is good until 1969.

Q. That was issued in March of—

A. The 28th.

Q. And it does have an eye restriction on it, does it not?

A. Yes, it does have, and I have to wear glasses.

Q. Did the police get in touch with you originally or did you get in touch with the police?

page 584 } A. No, I called them.

Alma L. Kilpatrick

Q. Now, was that after you had seen pictures of the defendant on TV?

Mr. Harrigan: Objection.

Mr. Hassan: Wait until I finish my question at least, Mr. Harrigan.

Mr. Harrigan: I object. Leading the witness. All he is asking are just leading questions all along and suggesting answers.

The Court: That objection is well taken. Sustained.

Mr. Hassan, you can't, as you well know, suggest the answer to any question you ask, and I think you did that time. She had not made any mention of that before.

Mr. Hassan: I object, Your Honor. That was exactly what she testified out of the presence of the jury.

Mr. Harrigan: I object to that and move to strike that, Your Honor.

The Court: The jury will disregard that. It is stricken.

Mr. Harrigan: I object because it is outside the cross examination. There was nothing covered like that.

Mr. Hassan: You object to what?

Mr. Harrigan: I object to that because it is page 585 } outside the realm of cross examination.

The Court: It is overruled on that point. It is explanatory on cross examination.

By Mr. Hassan:

Q. Where was the first time you saw a picture of the defendant?

A. I saw it on TV.

Q. What station, do you recall?

A. I don't remember.

Q. Was this before you called the police or after you called the police?

A. It is before.

Q. Now you then saw the police as a result of that telephone call in the car Mr. Harrigan talked to you about by your house?

A. Yes, in the Willston Shopping Center.

Q. Did there come a time this week when you had occasion to call the police?

A. Yes.

Q. Where were you then?

A. I was in Washington state.

Nancy Ellen Thoburn

Q. Were you in Bremerton?

A. Yes.

page 586 } Q. What did you call the police about this week, Mrs. Kilpatrick?

Mr. Harrigan: Your Honor, this is definitely outside the area of cross examination. May we approach the bench?

The Court: I don't think you need to; I'm not going to permit that, Mr. Hassan. That would go to something that is outside the testimony.

Mr. Hassan: I think it is entirely within the scope of the testimony, Your Honor, and I would like the record to show that—

The Court: Don't recite.

Mr. Hassan: I am not going to recite what she was going to say, that any material that reflects upon the identification which she was questioned about by Mr. Harrigan is proper cross examination, and I would like to take an exception to the Court's ruling on this matter.

The Court: Exceptions noted. Go ahead.

Mr. Hassan: I have no further questions, Your Honor.

Mr. Harrigan: That's all.

The Court: May the witness be excused?

Mr. Harrigan: Yes, sir.

page 587 } The Court: All right. You are excused and free to go, Mrs. Kilpatrick.

The Witness: Thank you.

(Witness excused)

Whereupon, NANCY ELLEN THOBURN was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name and your address.

A. Nancy Ellen Thoburn, 858 North Liberty Street, Arlington, Virginia.

Q. Now, Mrs. Thoburn, did there come a time on or about the 25th day of August, 1967, when you had occasion to observe something unusual in your neighborhood?

Nancy Ellen Thoburn

A. Yes, sir.

Mr. Harrigan: May we approach the bench on this, Your Honor?

* * * * *

Conf. Mr. Harrigan: Your Honor, I don't know who 11/28/67 the witness is and I don't know whether she was page 4 } brought down to the police station or not and given a viewing or not, but I think we have a right to ask the Commonwealth to proffer what he expects to show, and whether those facts did exist, and if they do, we request a hearing outside the presence of the jury on this witness.

We objected strenuously the first part of yesterday and early this morning today, that when this situation arises we have a right to have a proffer of what he intends to show so that we can ask for our *voir dire* hearing outside of the presence of the jury. It's not been done and I submit that this similar problem will be here on some of these other witnesses. I would like Mr. Hassan to proffer what he expects to show and whether this lady was one of the ladies that came down to the police station.

The Court: Mr. Hassan?

Mr. Hassan: No proffer.

The Court: You put me in the position of having to construe the Wade case strictly. It doesn't provide the slightest guideline to the unfortunate trial judge who is required to apply the doctrine. No guideline is given as to how

Conf. the trial judge shall find out in advance if they 11/28/67 must have a hearing out of the presence of the page 5 } jury.

Therefore, it seems to me that the only sanction is that if improper testimony comes in, the Commonwealth exposes itself to a mistrial, thus putting on the Commonwealth a duty to protect itself by not allowing improper testimony to come in.

In the case of the last witness, if the Court had concluded that the last witness' identification in Court was the tainted fruit of an illegal line-up, probably a mistrial would have had to have been ordered because she had already made some sort of identification, although a vague one.

The Court is put in the position that if the Commonwealth

Nancy Ellen Thoburn

will not disclose in advance what the witness is going to say, it is simply, in effect, putting the Commonwealth on terms. If the witness turns out to testify to an identification which is based on an illegal foundation, the evidence will have to be struck and the Court would have to entertain a motion for mistrial, so it is up to the Commonwealth.

Mr. Hassan: I am not going to submit my case on pretrial, on every witness, for the type of thing this last witness was put through by Mr. Harrigan.

Mr. Harrigan: I object, Your Honor.

Conf. Mr. Hassan: I do not intend to have any pre-11/28/67 examination, preliminary hearing of every testimony of every witness. There has been no objection to a question that has been asked of this witness. The entire procedure at the bench is out of order and is misleading the jury, and if there ever was a mistrial, it is the repeated attempts to come up here and have a preliminary hearing. I hope this case is appealed to protect the Commonwealth.

Mr. Harrigan: Your Honor, I would make the motion that the Court would require the Commonwealth to proffer whether this witness is going to discuss identity and whether she was, in fact, brought for a pretrial line-up, and I move that the Court require the Commonwealth to proffer that information.

The Court: That motion is denied.

Mr. Harrigan: Exception on the basis of the Wade decision.

* * * * *

Q. Mrs. Thoburn, did something unusual occur page 588 } in your neighborhood on that day?

A. Yes, sir.

Q. What was that?

A. Well, at the time that the unusual occurrences began, I was returning from Bon Air Park where I had been playing with my husband and children.

I was walking on Liberty Street toward Wilson Boulevard. Two of my children had run ahead of me and had already reached our home. One of my children was holding my hand and walking beside me. We were nearing, I believe, it's 9th Street, the first street from Wilson Boulevard. As we were crossing that intersection, I saw a man running. I usually don't pay much attention to things like this. I don't

Nancy Ellen Thoburn

believe I am a busybody; but since the man looked distressed, and seemed to be in a hurry, more than usual, I did look back at him again the second time.

Q. Will you tell us what you saw at that time?

A. I saw a man of medium build with dark hair, and his complexion looked dark to me. The beard line appeared such as you would see a man with dark hair, a brunette. He was young. He had on casual type clothes. The impression that I got was of a loose-fitting outer coat of some kind, page 589 } although I can't give a definite description of the coat. The color that impressed me and stood out in my mind after I tried to recall this to my memory was a dark—some kind of a dark gray. The man was wearing casual shoes, not dress shoes, I don't believe. His pants' legs were wet from his feet up to halfway up to his knees. He was wearing a hat.

Q. Did you on that day come to the Police department to be interviewed?

A. No, I did not. In fact, I dismissed it from my mind altogether. I went into the house. I was wet myself from playing in the stream with my children. I went in the house. I glanced at the clock to see if it was time to get lunch, and I changed my slacks and I started to fix lunch for my family; and my husband had heard the commotion in the shopping center and seen the cars all stopping and he had run around the corner to see what was going on; and not until he came back and told me, did I realize what had happened.

Q. Please answer this, yes or no. Did there come a time that day when you went to the police department?

A. Yes, sir.

Q. Now, Your Honor, I am getting to where if he wants to object, I am willing to have the jury excused. We'll take it from there. Up to this time we are not entitled to have this—

page 590 } Mr. Harrigan: I object to his speeches, Your Honor, and I move that they be stricken from the record. I don't think they are at all necessary.

The Court: The objection is overruled.

Let the jury retire.

(Out of the presence of the jury.)

Nancy Ellen Thoburn

VOIR DIRE EXAMINATION

By Mr. Hassan:

Q. Mrs. Thoburn, when you were at the police department, who interviewed you?

A. I am not sure, but I have talked—I don't remember who the policeman was at the station who interviewed me. I know who came to my house, but I don't remember who it was at the station.

Q. Were you interviewed on the third floor?

A. It was either the third floor or fourth. I think it was the fourth.

Q. Well, there's only three.

A. Well, it must have been the third, then.

Q. At that time, did you have occasion to see anyone sitting at the counsel table?

A. At the police station?

Q. Yes.

page 591 } A. I don't believe so.

Q. You didn't see anybody sitting at this table?

A. Oh, you mean did I see any of these people.

Q. Yes, at this table.

A. Yes.

Q. Who did you see?

A. John Patler.

Q. Who else did you see?

A. I saw the other witnesses who had been taken up to the station the same day.

Q. When you saw John Patler, who was with him?

A. At the police station?

Q. Yes.

A. Well, he was escorted—the only time I saw him at the station was when he was being escorted by the police.

Q. Did you see Mrs. Lane with him?

Mr. Harrigan: I object to his leading.

The Court: Overruled for this purpose.

By Mr. Hassan:

Q. Did you see Mrs. Lane with him?

A. No, I didn't see her.

Q. You didn't see her?

Nancy Ellen Thoburn

A. No.

page 592 } Q. Now, at that time did you make an identification?

A. I don't believe at that moment I did. I thought about it. I racked my memory and thought about it, but I didn't at that moment.

Q. Before you left the police station, did you make any statement to the police officer about an identification?

A. I was interviewed as to my statement and what I told them was very much what I have already stated here today. I remember making the statement that there was nothing conflicting about the appearance of the man I saw in my memory to John Patler.

Q. Now, Mrs. Thoburn, do you have an opinion at this time as to whether or not John Patler is the man you saw in Bon Air Park?

Mr. Morris: Objection, Your Honor, she never said she saw anybody in Bon Air Park.

By Mr. Hassan:

Q. On your way home from Bon Air Park.

A. Do I have an opinion? Is that the question?

Q. Yes. What is the opinion?

A. Yes.

Q. That it is the man?

A. Yes.

page 593 } Q. Now, since the time you made the statement to the police, have there been any unusual activities at your home?

A. Do you mean of the nature that would upset me?

Q. Yes.

A. I have had some phone calls.

Q. And anything else?

A. Not that I know of, nothing tangible. I have had some crank phone calls, at least four of them.

Q. What are the nature of these crank phone calls?

A. Some of them are calls, and when I answer—and three of them have been when my husband was not at home and a car was not there. Someone called me, and I say hello repeatedly, and nobody says anything and they finally hang up.

Q. Outside your home has anything unusual occurred?

A. No.

Nancy Ellen Thoburn

Q. Do you feel that these calls are related to your testimony in this case?

The Court: Sustained.

Mr. Hassan: No further questions.

By Mr. Harrigan:

Q. You don't wear glasses, do you, Mrs. Thoburn?

A. No, sir, I have 20-20 vision.

page 594 } Q. Now, this area where you saw this, you say
you saw the individual running. Was he walking
or running?

A. He was—it was a mixture of walking and running. He impressed me, whoever this was, impressed me as being in a great hurry by trying to appear that he was not in a hurry. He was partly running and partly walking.

Q. Where exactly did you see this individual?

A. I saw him when his foot was lifted to take the step up to the curb, and well, in fact, all the way across that little intersection there at Liberty and 9th. I watched him from the time I saw him until we passed each other. He was going in the opposite direction from me, and I observed him as we walked those several feet there.

Q. Would you characterize his movements as a rapid walk, then, rather than a run?

A. I called it a run myself.

Q. You would?

A. It was definitely not a walk, but I mean I am sure he could have run faster, but it was a run.

Q. Now, 9th and Liberty, that is almost right behind the shopping center, isn't it?

A. It is the first street behind the shopping center.

page 595 } Q. As a matter of fact, there is a yard, a row
of houses and then the shopping center is right
behind where the house is. Right?

A. Right. The houses come around the corner from the shopping center and also there is a row of houses behind the shopping center.

Q. Which way did this individual that you saw go?

A. He was going toward Wilson Boulevard, whichever direction that is. I mean, I was going toward Wilson; he was going away from Wilson, excuse me.

Q. Which way would that be?

Nancy Ellen Thoburn

A. I don't know. I didn't have a compass with me. I don't know. I am a woman. I guess it would be—I guess I would have been going south and he would have been going north.

Q. So you were headed toward Wilson, is that right?

A. Right, and the man I passed was heading the other way.

Q. Now, was it on the same side of the street?

A. No, sir.

Q. Was he on the opposite side of the street?

A. Yes.

Q. How wide is the street?

A. It is a narrow street.

Q. How wide is a narrow street?

page 596 } A. Well, it is just wide enough for two cars to pass if someone is parked, so I guess the width of four cars is how wide it is.

Q. So what do you say was the width?

A. I would say it is the width of four cars.

Q. Which is how wide?

A. Twenty-some feet, I suppose; I don't know.

Q. All right, now you said something about a hat, didn't you?

A. Yes, sir, I saw a hat.

Q. What color hat?

A. Well, I don't know exactly. The impression that was left in my memory was that of a dark gray hat.

Q. I don't want the impression that was left; I want what you saw at that time.

A. That is what I saw.

Q. If you know what color hat.

A. He had a hat on, definitely. It wasn't yellow, and it wasn't red; it was some neutral color like dark gray.

Q. Now, you say it wasn't red or yellow.

A. It was a dull neutral color, but he did have a hat on.

Q. What kind of a hat?

page 597 } A. Well, in my brief encounter it seemed to me it could have been a felt hat that was rather battered or it might have been some type of cap, but it looked rather battered.

Q. Battered? I don't understand exactly what you mean by that.

A. It didn't look very fresh and new and neat. Maybe an old hat.

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RECORDS
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Supreme Court of Appeals
Richmond, Va.
(In Four Volumes)

Record No. 7103

In the
**Supreme Court of Appeals of Virginia
at Richmond**

JOHN PATLER

v.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Nancy Ellen Thoburn

Q. And the coat that you said you saw? What kind of coat?

A. It was a long coat.

Q. A long coat? Being how long?

Mr. Hassan: If Your Honor please, he is doing that same pre-trial thing that I am objecting to here, and we are here on a particular point of a question of whether or not you have to give notice to counsel when you have somebody walk by a witness of the police department, and I am going to object to this preliminary hearing and pre-trial of every witness put on this stand. It has nothing to do with the Wade case.

The Court: I think you are going into general cross examination. Objection sustained.

Mr. Harrigan: I think it goes to the opportunity to observe at this time.

page 598 { Mr. Hassan: It has nothing to do with the Wade case, and I am going to object to that.

Mr. Harrigan: Now I am offering it for the purpose of showing the opportunity she had to observe at that particular time which is one of the criteria which is to be considered.

The Court: I think you are right, and you are entitled to do that, but it seems to me that you have now gone beyond that point, and you are getting her to describe how he was dressed which is proper cross examination before the jury to test her recollection. But I think I have heard all that I need to know about the length of time she could see him and their relevant positions. I'm not interested in how accurate her observation was. I am just interested in how much of an opportunity she had to see. The jury would be interested in the accuracy of her observation.

Mr. Harrigan: All right.

Now, with regard your opportunity to see, when you first saw this individual you have already testified he was on the opposite side of the street. Was he directly across from you?

Mr. Hassan: We are going right back into that, Your Honor. The only scene which is material to this argument is the scene at the police headquarters.

page 599 { The Court: The objection is overruled.

Mr. Hassan: Exception.

Nancy Ellen Thoburn

By Mr. Harrigan:

Q. Was he directly across from you?

A. Well, now, the first time I saw him was as I approached the intersection, and he was at the intersection, and I was walking parallel to him, you see, so from the time he came into my sight until I passed by him, I was looking at him.

Q. I don't understand.

A. Well, I mean if you walked past someone on the street—

Q. I thought you said you were on different sides of the street?

A. We were, but I could see him very plainly.

Q. As you were walking up, he would be on your right?

A. Yes.

Q. Is that right?

A. Yes.

Q. When you first observed him toward your right, how far up was he or how far down was he?

A. At the corner is where he came into my vision, at the corner.

page 600 } Q. All right, and where were you?

A. I was not to the corner.

Q. How far were you from the corner?

A. Well, I don't know. I suppose I was maybe at a rough guess would be 50 feet, maybe the distance of four houses or something like that. It would be more than fifty feet.

Q. And he continued down the side of the street that he was on?

A. Yes.

Q. You continued up the side of the street that you were on?

A. Yes.

Q. Now, did you see any other people running at that time?

A. No, I didn't, but my little boy got—

Q. I am asking you now. Did you see anybody else run at that time?

A. I didn't.

Q. You didn't?

A. I did not. Because I was minding my own business and I went on in my house which is only two houses from that corner, you see. If I had stayed outside, I might

page 601 } have seen more.

Q. Now, did you call the police that day?

Nancy Ellen Thoburn

A. No, I did not. I made no effort to contact the police whatsoever, because I didn't realize what was going on at the moment.

Q. You didn't attach any real significance to this man that ran or walked rapidly by you, is that correct?

A. I thought about it, but I didn't connect the two at that time, at that moment.

Q. All right, and just when did you decide to connect the two?

A. I didn't decide to. Your Honor, Your Highness, or whatever I am supposed to call you, I didn't decide to, but just like that.

Q. It dawned on you?

A. It dawned on me that this could have some connection, and then I began to think about it.

Q. When did that happen?

A. Oh, maybe an hour later.

Q. Did you call the police the same day?

A. No, my husband had been following what happened in the shopping center, and I had told him about the running man, and he's the one who realized that it probably had some significance.

Q. He told you that or you talked it over with him?

A. No, I didn't talk it over with him. I usually talk to my husband. He is usually around and available, and I had mentioned to him that I saw a man running, and he's the one that brought the detectives. He thought that—

Q. Do you know the barber up in the shopping center?

A. I did not know the barber, no. I think my husband had patronized the barber shop, and there is a mild acquaintance, but I do not know him really.

Q. All right. Then you did call the police eventually?

A. I did not call the police. They came to me.

Q. Did your husband call them or did they just happen—

A. In conversation he told them that I had seen someone and in searching the neighborhood they came to my door and they asked me.

Q. When was that, the next day?

A. No, the same day, that afternoon.

Q. What time in the afternoon?

A. Between two and three, I think.

Q. All right, did you give them a description of the person that you saw?

Nancy Ellen Thoburn

A. I did.

page 603 } Q. What description did you give them?

A. The same one I gave here today.

Q. Who did you give it to?

A. I gave it to an officer at the station that day, and then a few days later I was visited by Detective Light and Crickenger, and it might have been as much as two weeks or so later, two or three weeks later, and I gave them a description again.

Q. And that was a medium build, dark hair, dark complexioned—is that right?

A. Yes.

Q. You said something about a beard line.

A. Well, I think every man, nearly every man, has a beard line. I said even from where I saw him, I could see the darkness that would go with a brunette.

Q. I see.

A. And I visibly saw that that day.

Q. Did you see any pictures in the paper or on TV?

A. Yes, later I did. That night it was on TV and the next day.

Q. When is the first time the police showed you any pictures?

A. It must have been two or three weeks later
page 604 } when they visited me at my home. I was shown pictures, but not before that.

Q. Did you go down to the police station on the 25th?

A. Yes.

Q. How many other people were down there?

A. There were three other witnesses there.

Q. Did you know what you were going down for?

A. Yes.

Q. What?

A. To give a description. I thought I was going down to see if I could identify the man that I saw running.

Q. Where did you go in the police station?

A. To the detective's office.

Q. That is the third floor?

A. I guess it is; I couldn't say right now.

Q. Were you in the hall there?

A. We were in the office, and Mr. Patler's lawyer would not let us look at him.

Q. Who was that lawyer?

Nancy Ellen Thoburn

A. Mrs. Lane, I guess.

Q. She would not let you look at him?

A. That was the reason we were given for sitting so long in the office.

page 605 } Q. Who gave you that reason?

A. The detectives. I don't know; that was what I heard. I did not see Mrs. Lane that day, period. This is the reason that I was given why we were kept waiting because his lawyer, whoever it was, would not let us see him.

Q. All right.

Did they come out and finally tell you okay?

A. No, they did not.

Q. What happened?

A. They put a bench for us beside the elevator so that when he was changed from one room to another and brought down the hall that we would catch a glimpse of him then.

Q. Was he brought down the hall?

A. Yes.

Q. How many detectives were holding onto him?

A. I know there were at least two escorts.

Q. Was he handcuffed?

A. Yes.

Q. Was it pretty obvious who the defendant was and who the detectives were?

A. Yes, indeed.

Q. That is the time that you observed him?

A. That was the second time.

page 606 } Q. Now, you made a statement that there was nothing conflicting after that observation. Was that your statement?

A. Yes, I said that.

Q. He didn't have any coat on then, did he?

A. He did when I saw him. Who? What do you mean?

Q. At the police station.

A. No, he didn't have on any coat there.

Q. What did he have on?

A. He had on a yellow shirt and sort of steel gray slacks and tennis shoes and no hat.

Q. What do you mean when you said nothing conflicting?

A. Well, I wasn't looking at his clothes. Anyone can change clothes. I'm talking about the features and the coloring, the facial expression. That is what I mean, there is nothing conflicting.

Nancy Ellen Thoburn

Q. Now, did that observation you had down there formulate the opinion that you gave a little while ago? Did that help you to be sure of your opinion that you gave in court today?

A. In my consideration of trying to be fair and just and honest in this whole matter, I made every effort not to let the pictures influence me.

Q. Aside from the pictures, did the observation you had at the police headquarters where you could get a page 607 { good look help you in formulating the opinion you gave in court today?

A. Well, in order to make an identification you would have to look at the suspect.

Q. You are not answering my question. Did you understand it?

A. Yes, I understand your question.

Q. What is the answer?

A. What you mean is, do I know that he is John Patler because I saw him at the police station? That is what you mean?

Q. No, I mean did that help you formulate—was that one of the factors that you took into consideration in giving your opinion today?

A. No.

Q. It was not?

A. No.

The Court: Mrs. Thoburn, did that view that you had of Mr. Patler in the police station in any way crystallize the impression that was remaining in your mind from your observation on North Liberty Street?

The Witness: I don't think it did, because I had that in mind. I realized that at the time that I know this page 608 { man, I am looking at his suspect, and I know that he is being held. Now, the comparison I tried to make since I had been asked to make the identification is to compare with the picture I had in my memory of the man on the street which is still there today. I can visibly see him and remember what I saw that day, and I have tried to compare that.

Mr. Harrigan: All right, that is all.

The Court: Mr. Hassan?

Mr. Hassan: No further questions.

Nancy Ellen Thoburn

The Court: Mr. Hassan, what you proposed to ask her before the jury as to this identification?

Mr. Hassan: I propose to ask her to look at the defendant as she recalls what she saw on that day and tell us whether or not she has an opinion as to whether or not this defendant is the man that she saw running on 9th and Liberty Street on the 25th day of August, 1967.

The Court: Irrespective of the Wade problem, does the defense have an objection to the form of that question?

Mr. Harrigan: Yes, Your Honor, we do have an objection to the form of the question.

The Court: I think the form of the question is objectionable. I think you can flatly ask her if that is the man she saw or not, and her answer can be three things, page 609 } yes, no, or I am not sure.

Mr. Hassan: I think I am entitled to have a say as she said here, that she can see that man here today visibly in her mind as she saw him on that date.

The Court: All right. She can see that man, but is that the man that is sitting at the counsel table? That is the question. I don't believe that a statement of opinion on her part would be proper. She has got to testify that she can identify this defendant as the man she saw or that she cannot, and that is what the jury is entitled to know, not any sort of guess or opinion of reconstruction.

I take it—I don't want to lead you, Mrs. Thoburn, if you are asked the direct question, is this the man, what would be your response?

The Witness: I'm afraid it would have to be yes.

The Court: Do you have the Wade case there?

Mr. Harrigan: Yes, sir. I have several other questions, too. I forgot to ask, Your Honor, if I may.

The Court: Give me just a minute.

Mr. Hassan: Is this more rehearsal or is this pertinent to the question we have here?

Mr. Harrigan: It pertinent.

Mr. Hassan: If Your Honor please, can we page 610 } have that four o'clock recess?

The Court: Yes. How much time do you want?

Mr. Hassan: A good twenty minutes. There are several phone calls in connection with this.

The Court: All right, court will stand recessed until quarter of five.

Nancy Ellen Thoburn

Mrs. Thoburn, you are not to discuss this case with anyone during this recess.

(Whereupon, a short recess was taken.)

The Court: Does either side wish to be heard further on this point?

Mr. Harrigan: I would like to ask several other questions to the witness, Your Honor.

The Court: All right.

By Mr. Harrigan:

Q. Mrs. Thoburn, when you were within the hall of the police station there waiting for a viewing of John Patler, how many other people were there that were waiting for the same viewing?

A. Three.

Q. Do you recall who they were?

A. Yes. Do you want their names?

Q. Yes, if you remember.

page 611 } A. Becky Middleton and the barber, James—

Q. Cummings?

A. Maybe it is Cummings, yes, and the man who lives on the corner. He's an older man, and his name starts with "S"—

Q. Stuart? Right?

A. I believe.

Q. Now, after the defendant walked by in the company of the detectives were there any comments back and forth between the four people that were there as to whether it looked like him or didn't look like him?

A. I suppose. I don't think there was much talk, really, because it was a rather unnerving experience, and I don't recall much talking being passed back and forth.

Q. That is not what I asked you. I asked you whether there was any talk about the identification among the four. Did any of the others indicate that in their opinion that was the man?

A. I don't recall anyone saying anything like that.

Q. Do you recall what they said?

Mr. Hassan: If Your Honor please, she said there wasn't much talking. She doesn't recall anyone saying anything like that.

Nancy Ellen Thoburn

page 612 } I don't know why he should be allowed to badger the witness.

The Court: She may answer if she remembers what was said. If she can't, that's all right.

By Mr. Harrigan:

Q. Do you remember anything that was said?

A. Not particularly; nobody talked really very much about it.

Q. Did the police then immediately come up and ask you what your opinions were, the four of you?

A. No, there was no consultation as a group whatsoever.

Q. What did they do after the man walked by?

A. They dismissed the ones that they had interviewed, and they took my interview then at that time in private.

Q. What I mean is after the man walked by, did anybody then ask you whether you had recognized him?

A. Not in that position when the witnesses were as a group. There was no questioning done.

Q. Okay. Did they ask you individually then outside of the presence of the other three?

Mr. Hassan: I am going to object to that, Your Honor. How would she know what were asked the others? She would know what was asked her. If they didn't
page 613 } ask her in front of anybody.

The Court: As I understand the question, he was just trying to find out if he asked her these questions apart from the other three people.

Mr. Hassan: The question was what did he ask the three individually?

The Court: Would you rephrase that, Mr. Harrigan?

By Mr. Harrigan:

Q. Did they ask you if you would recognize the man outside of the presence of the other three?

A. I don't recall them asking me right at that moment or that day or that time. I don't recall if they did. I don't remember, but they had not had a statement from me at that time, and so I was taken into an office, and I gave my statement in private to a detective.

Q. Who?

A. I do not remember his name.

Nancy Ellen Thoburn

Q. A written statement?

A. A written statement, yes.

Q. I would like to look at that statement, if I could, Your Honor.

Mr. Hassan: I don't recall ever having seen it, but I will go look and see if there is one in there. I have
page 614 } a statement written by the detective, not one written by the witness.

The Witness: No, I didn't write it. The detective wrote it.

The Court: That answers that.

By Mr. Harrigan:

Q. Did you tell him what to say? Was he writing down what you said?

A. He asked for what I saw, and I told him, and he wrote it down.

Q. Did he ask anything about the viewing that you took?

A. I don't remember him asking that at that time.

Q. Did you read the statement?

A. No.

Q. After he wrote it?

A. No.

Q. I would like to see the statement, Your Honor. It is obvious that it was taken right after this viewing. The obvious thing is did you recognize the man you saw in the hall, and if she made some response at that time—

The Court: You are speaking of the detective's notes of this conference rather than a statement by her?
page 615 } Mr. Harrigan: Her statement. He was merely transcribing it.

Mr. Hassan: No, sir, he was not. He was making an original report which he is not entitled to see, and it is not pertinent to the issue we are here on.

The Court: Her testimony does not support at this point any inference that she gave a written statement. I can only conclude from this testimony that the detective made notes of his conversation with her. You would not be entitled to those.

By Mr. Harrigan:

Q. Let me ask you this. Was the detective taking down what you said?

Nancy Ellen Thoburn

A. Yes.

Q. Word for word?

A. Well, I don't know. I didn't read it, but I just told him what I saw and he was writing it down.

Q. Since it is her words that he was taking it down, I would again ask for that.

Mr. Hassan: How does he know it was her words? There was no such testimony. She didn't read it; she doesn't know. And he didn't read it, so he doesn't know.

Mr. Harrigan: I think we have a right to any page 616 } description that she gave prior to or at the time of that particular viewing of the witness and apparently was right after the viewing.

The Court: She has already testified as to what that was. As I understood, it was not to the effect that there was nothing about the defendant's appearance that was inconsistent with the appearance of the man that she saw on the street, and that is what she said she told him at the time. Do you contend that she told him something else at that time?

Mr. Harrigan: Well, I contend—

The Court: You can examine her about that.

By Mr. Harrigan:

Q. Did you at that time give him a statement that John Patler was the man you saw?

A. I don't recall making a definite statement at that time other than what the judge just said. That is what I said exactly.

Q. And nothing more at that time?

A. I don't recall saying any more at that time.

Q. Let me ask you this then. The statement that you made that there was nothing inconsistent about Patler when you saw him with the man that you saw down there, page 617 } was there any question in your mind at that time about whether you were sure it was the same man?

A. There was a reasonable question. I think there would always be. A person could have an identical twin for that matter. No human being is infallible. There would be a reasonable doubt.

Q. Do you have that same reasonable doubt now?

A. What do you consider a reasonable doubt?

Nancy Ellen Thoburn

Q. I don't know.

The Court: His question is, do you have the same degree of doubt in your mind today as you had that day at the police station when you were talking to the detective?

The Witness: I think that day in the police station with everything happening so fast and with the excitement and the emotional strain, it was hard to make, possibly to really express my views clearly, and that I was glad that I didn't try to make a definite statement at that moment, and it was with much thought and consideration of what I did see on the street that day that I felt that I would have to say yes, because I cannot say no without good conscience.

Mr. Harrigan: All right.

Now, why don't you answer the question I just asked?

Mr. Hassan: That is the answer, Your Honor.
page 618 } That is a very appropriate answer and absolutely accurate to the question.

The Court: I think the answer was responsive.

Mr. Harrigan: All right. I have the same motion on her testimony, Your Honor, and I would like to state my grounds outside of her presence.

No offense, ma'am.

The Court: Would you care to step just outside the courtroom? Don't discuss the case.

Mr. Harrigan: On the same grounds as the other testimony and of the Wade decision, I think it is conceded that the defendant was not notified of that particular showing or his counsel was not notified of this showing which takes it within the Wade case.

The Court: Let me ask you this. There seems to be a difference of opinion between you two gentlemen as to whether counsel was actually present. She says she was told by the detectives that Mrs. Lane in some other room would not permit a view of Mr. Patler at that time. She did not see Mrs. Lane in the corridor when she did see Patler. Are you in a position to tell me whether Mrs. Lane was present at that time or are you not? And I don't mean in some other room.

page 619 } Mr. Harrigan: Present or whether she was notified there was going to be a showing in front of other witnesses.

The Court: Let's take them separately. Was she physically present in the place of the viewing and at the time of the viewing?

Mr. Harrigan: We had better let Mrs. Lane answer that.
The Court: You don't have to answer if you don't want

to.

Mrs. Lane: Your Honor, in the first place I was never asked if there could be a viewing.

Mr. Hassan: That wasn't the question.

Mrs. Lane: If she was told that I objected and that is why they were kept waiting, I knew nothing about it. So that is out. I personally didn't see them. When I went out with the defendant it was when the corridors were filled with detectives and so forth trying to hurry him out to get him safely to the police station and I didn't see people in the hall then. And I understand it was the second time. In other words, that John was brought past them, but not at the time when I was with him and we were hurrying to get over to the police station.

The Court: All right.

page 620 } Mr. Hassan: If Your Honor please, I was there and it was when he was taken out, Mrs. Lane went with him and got in the paddy wagon and rode from the back of the police station on over to the jail entrance when they backed up. Mrs. Lane walked right by with him. The first time he was taken over was to be advised of his rights, and there wasn't anybody there but some detectives and newspaper people that were trying to get to him. It was the time they were not there until late in the afternoon, because Mrs. Lane requested that he be kept there until his wife could come and see him, and that was the delay, to wait for Mrs. Patler to come and see him at the request of Mrs. Lane. After he had seen his wife, he was then taken on over to the jail. Mrs. Lane was with him. She was with him all the time from the time he asked for counsel, and she arrived there long before anybody else ever arrived at the police station. In fact, he wasn't even taken downstairs to be booked. They brought the fingerprint man upstairs; they brought the cameras upstairs; they did all of the booking procedures and fingerprinting in the Detective Bureau and the squad room, and there was nobody there but detectives and Mrs. Lane and Mrs. Patler at the time excepting I was in and out of both places.

page 621 } Mrs. Lane: Your Honor, the delay was not just waiting for Mrs. Patler. The delay was because we were waiting to have a warrant served on him. We kept asking where was the warrant and being

told it would come later. He was advised of his rights before I even saw him.

Mr. Hassan: There will be testimony on that score, Your Honor, about him being advised of his rights. He was advised of his rights before a warrant was served. When he was served with a warrant and was fingerprinted and photographed, Mrs. Lane was there, and there was a request, and I think both Mrs. Patler and Mrs. Lane will admit that they requested to be allowed there. The request was granted, and it took some time to get him there, and he was kept there until she arrived.

The Court: Does the Commonwealth deny that his counsel was advised that he was to be shown to eye witnesses at that time?

Mr. Hassan: I don't think counsel was advised at any time. I don't think there is any requirement to advise counsel.

The Court: I understand that.

Mr. Hassan: I don't think that counsel was advised. It can't interfere with it. I don't think that counsel said if they would permit a lineup, it would make one iota of page 622 } difference. If she wanted to be present at a lineup, it would not interfere with it. All she had to do was to be present and not interfere with it.

The Court: Are you all ready to have your rule on this thing?

Mr. Harrigan: Yes, I make a motion to strike any identification of this witness based on the Wade, Gilbert and Stovall decisions, and the arguments which we already discussed in this case.

The Court: All right. In my view, the type of showup which was conducted here was the type that was castigated by the Supreme Court as the worst possible kind, namely the one in which the defendant is shown to the eyewitness in handcuffs in custody with no one else there with whom they can compare him. Nothing can be more prejudicial than that. Nothing more likely to crystallize in the witness' mind the fact that this is the man. The Court is still left with a decision as to whether or not this identification made by the witness in court is the fruit of that or rather the fruit of her independent observation of him in this case out on the street.

This seems to me to be a singularly intelligent and conscientious witness who is trying her best not to
page 623 } allow her testimony to be influenced by that sub-

sequent appearance. She has verbalized her effort to refrain from varying her impressions from what she saw on the street, and I believe her. I believe she is trying to do that.

However, the fact is that she has substantially changed what she said, because when the thing was fresh in her mind right away she made the statement which I attributed to her a moment ago, that is, his appearance was not in any way inconsistent with that of the man she saw on the street. Now she says, if actually pressed to say is this the man or this not the man, she would have to say that it is. Well, that is a change, and it can come about only through hindsight or through refreshment or crystallization of her impression. So notwithstanding her conscientious effort to avoid such a crystallization, I think she is handicapped, and I think I am left with no alternative in these cases to suppress any identification subsequent to that made at the police station and that it seems to me rests on the secure foundation of what she saw on the street. I think she can testify as to what she told the police officers at that time. I do not believe she should be permitted now to make a courtroom identification which is any stronger than that, because if she does, it is obviously a refreshment of some sort of hindsight and not
page 624 } what she saw on the street on the 25th of August.

Mr. Hassan: Is her direct testimony up to this point satisfactory to the Court?

The Court: Yes, it is, and I don't think, as well as I remember, that you went so far as to ask her what she told the police.

Mr. Hassan: I asked her only to describe what she saw and if there came a time that she went to the police department. I did not ask any further questions after that.

The Court: That is my understanding. Now, the identification that she made saying the appearance of Patler was not inconsistent with the man she saw on the street, I don't believe was made in the presence of the jury.

Mr. Patler: It was not.

The Court: You may bring that out if you wish.

Mr. Morris: Your Honor, so there will be no misunderstanding, the last question that was asked of the witness by Mr. Hassan—

The Court: I think was simply did you come to the police station.

Nancy Ellen Thoburn

Mr. Hassan: I think did there come a time when you came back to the police station.

The Court: I think that was the question.

page 625 } Mr. Morris: Will the Court caution the witness prior to the time the jury comes back as to anything she may volunteer?

The Court: All right, I will caution her as to the nature of the ruling and tell her not to testify as to anything to the lineup or the showup itself in the police station, that she may testify as to what she told the police officers with respect to identification of Patler at that time.

Mr. Hassan: But she cannot make a courtroom identification.

The Court: Yes.

Mr. Harrigan: Yes, meaning she cannot?

The Court: She cannot.

Whereupon, NANCY ELLEN THOBURN resumed the stand, having been previously sworn, was further examined and testified as follows:

The Court: Mrs. Thoburn, the Court will permit you to testify what you told the police officers at that time with respect to your identification of Mr. Patler which as I think we have phrased it two or three times was that his appearance was not inconsistent with that of the man that you saw on the street.

Mr. Morris: Her exact words were "not con-

page 626 } flicting."

The Court: Whatever the words were, I don't want to put any words in your mouth. You are not permitted to volunteer any information or make a courtroom identification here today, and you are not to testify to the fact that you saw him in the police station, that he was shown to you in the police station. You have testified to that, but the jury didn't hear it, so don't tell them.

Mr. Harrigan: Your Honor, that part about not inconsistent with the man she saw. That was made at the showup, as I understand it; that statement was made at the time or right after she was at the police station and in a statement that she gave to the police subsequent to that lineup or showup and not prior to it.

The Court: It would of necessity have been that, but because she had to have a standard to compare, she was comparing a man that she then saw with a man she had seen on

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the street, but I take it to be a rather spontaneous utterance that had no opportunity for any hindsight or refreshment whereas a courtroom identification would.

Mr. Harrigan: All right, I would except then to allowing her to testify as to anything as to a statement that she filled out or gave to the police during or very soon after the viewing such as without the consent of the defendant or the knowledge or counsel.

page 627 }

The Court: All right. Would you call the jury?

(In the presence of the jury.)

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Mrs. Thoburn, the last question was did you come to the police station. You said yes, I recall?

A. On August 25th.

Q. On August 25th, 1967?

A. Yes.

Q. Were you interviewed at that time?

A. Yes.

Q. Do you know the name of the officer who interviewed you?

A. No.

Q. Do you recall what you told the officer?

A. Yes.

Q. Would you please tell the court and the jury what you told the officer?

A. I told the officer that I had seen a man and passed him on the street on August 25th, as I was coming home from the Bon Air Park. I live on Liberty Street close to Wilson Boulevard.

page 628 } As I was walking home, two of my children had run ahead of me and one of them was holding my hand. As we approached the intersection of Liberty Street and 9th which is a very short distance from Wilson Boulevard, I noticed a man; I think the reason I noticed him was because of his hurry. He seemed to be running, not real fast, but he was running. He seemed to be in a great hurry. I think this is what took my attention and I looked back at him again, and as we passed, I was going toward Wilson Boulevard, he was going away from Wilson Boule-

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ward, and I had the opportunity to observe him as we passed until he had passed by me.

What I noticed about the man was that he had dark hair; and it seemed to be longer hair as opposed to baldness or a crew cut. I noticed a bushyness and I noticed a dark complexion, and a beard line that would go with a brunette. He was of medium build and height. He was wearing a long coat of some type, although I can't exactly identify it in every detail, but it appeared to be a neutral color. Also, his pants impressed me as being a dark gray, and he wore a hat; and I noticed one thing that stood out was that his pants legs were wet. It had been raining all that week, and it was very wet and the creek in Bon Air Park was swollen; and I had been there floating a raft with my boy, and I

page 629 } noticed—

Mr. Harrigan: Excuse me, ma'am.

It sounds like she is just ad-libbing now, and the question is what she told the police.

Mr. Hassan: If Your Honor please, she is not ad-libbing at all. I asked her to tell what she told the police officers. When she was previously on the stand, she did mention that the pant legs were wet halfway up and that she herself was wet from being in Bon Air Park. That was her testimony before.

The Court: Her testimony as to what she told the police is in effect as to what she told the jury here.

The Witness: Yes.

The Court: All right.

The Witness: But as I noticed, I very vividly remember that the man who was running had wet pants' legs. I don't know what else I can say except that I did not notice anything in his hands. I was asked this in the police station. I did not notice anything in his hands at that time; but I did notice the looseness, the loose-fitting coat, and it was a longer coat as opposed to a short jacket or a dress coat. It was a longer type coat, and I saw a hat on the man that I saw running.

page 630 } Mr. Hassan: Your Honor, I am going to ask you to ask the question which you said I could ask.

Mr. Harrigan: I object to that. I mean, if he wants to ask a question, I think he is the prosecutor. He should ask it. I don't think he needs any help.

Nancy Ellen Thoburn

Mr. Hassan: It was his objection that made you phrase the question, Your Honor; and I would like to have you ask the witness the question. If the Court will not, I will ask it.

Mr. Harrigan: I object to a commentary; and he knows how to ask questions. I have all the confidence in the world in him.

The Court: I will let Mr. Hassan ask it.

Mr. Hassan: Did there come a time when you made any statement to the police officer concerning what you have just described and its relationship to any picture or live viewing of Mr. Patler?

Mr. Harrigan: Objection, Your Honor.

The Court: The objection is overruled.

Mr. Harrigan: Exception.

The Witness: I had an opportunity to see Mr. Patler at the police station the same day, August 25th.

Mr. Harrigan: I object to that, Your Honor.

page 631 } Mr. Hassan: What she told the police.

The Court: We just want to know what you told the police officer about your impressions of Mr. Patler.

The Witness: At that time I recall seeing—when I say seeing—when I was asked if I could make an identification, I said that there wasn't any conflict in his appearance to the man I had seen, that there was nothing about him that conflicted my mental picture of what I had seen earlier that day.

Mr. Hassan: I have no further questions.

The Court: Cross examination.

Mr. Harrigan: May we approach the bench, Your Honor?

* * * * *

Conf.

11/28/67

page 6 } Mr. Harrigan: Based on her statement, Your honor, based on the station identification, we don't think that is proper testimony and we would ask for a mistrial based on that.

The Court: The motion is denied.

Conf. Mr. Harrigan: Exception, for the reasons previously stated in argument.

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page 7 } Mr. Hassan: The Commonwealth says fantastic. Refer to Page 637, line 10.

Nancy Ellen Thoburn

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, Mrs. Thoburn, you say you were walking in the vicinity of 9th and Liberty Street?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. Which side of the street were you on?

A. I guess that would be on the east side of Liberty.

Q. You were walking toward Wilson Boulevard?
page 632 }

A. Yes.

Q. And that would be the east side?

A. Of the street?

Q. Which would be which side? The left hand side walking up?

A. If you're walking toward Wilson, I was on the left.

Q. All right, and the individual that you saw, was he on the same side of the street or was he across the street?

A. He was across the street going in the opposite direction.

Q. You mentioned that the individual you saw had a coat on?

A. Yes, sir.

Q. It was what color, did you say?

A. It was a rather dark color, not black, but I recall it just being a dark gray, between a dark gray and a charcoal. That is the way it impressed me as being.

Q. Okay. How long was the coat?

A. It was longer than a jacket or a dress coat such as you have, a business suit. It was longer than that.

Q. Was it above the knees or below the knees?

A. I don't remember.

page 633 } Q. You don't remember that?

A. I don't remember exactly where it stopped, but I remember it was a long coat.

Q. Do you remember whether it stopped between the knees and the hip or just below the hip?

A. No, I don't.

Q. Do you remember if it was below the knees?

A. It wasn't below it, no, because I vividly remember the wet pants' legs and they were wet halfway up to the knees so the coat was shorter than that.

Nancy Ellen Thoburn

Q. Now, halfway up to the knees would be where, right about where the shin is?

A. Right about there, yes.

Q. What color were these pants?

A. Gray.

Q. Were they dark gray or light gray?

A. Dark gray.

Q. You could easily distinguish the wet portion of a dark pair of pants?

A. I could very, very definitely see that the pants' legs were wet.

Q. Now, how about the coat? Could you see if that was wet?

page 634 } A. It was not wet, I don't believe. It didn't look wet.

Q. You don't believe or it didn't look wet?

A. Well, I don't see how the coat could have been wet. The wetness stopped between the knees and the feet. The wetness went up to the shin. Okay. Well, the coat was not wet. It didn't look wet. I am just telling you what I saw. It did not look wet. I did not go over and feel it.

Q. Thank you. The knees from the shin, where the wetness stopped up to the knees, I take it, was not wet?

A. That's right.

Q. Did the man have a hat on?

A. Yes.

Q. What color?

A. It was a rather neutral shade, some sort of gray, I believe. Gray was the only color that I remember that stood out to me in his attire.

Q. What did it look like?

A. The hat?

Q. Yes, ma'am.

A. It looked like it could have been an old felt hat or some type of a cap.

Q. When you say old, what gave you the impression that it looked old?

A. It looked rather battered to me as opposed to being new and crisp.

Q. Now, did the hat come down over the forehead?

A. I believe it was pulled down a little bit, but I could still see the hair on the sides.

Rebecca Middleton

Q. All right. Did it come around to the back like all hats do?

A. It gave the impression of being stuck on the top of the head and came around the front, but I could see the black hair vividly.

Q. But the black hair you could see wasn't on the top of the head obviously, is that right?

A. Right.

Q. So you saw black hair on the back of the neck?

A. I saw black hair up to the temple.

Q. Up to the temple?

A. Up here (indicating). The top of the forehead.

Q. Did you notice anybody else running?

A. No, I went into my house—

Q. I didn't ask you that.

A. Well, I was almost home. If I had stayed out there, I don't know what I would have seen, but I did not
page 636 } see anyone else running.

Q. All right. That is all. Thanks.

The Court: Any further questions?

Mr. Hassan: No further questions.

The Court: May she be excused?

Mr. Harrigan: No questions.

The Court: You are excused and free to go.

(Witness excused)

Whereupon, REBECCA MIDDLETON was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

A. Rebecca Middleton, 863 North Liberty Street.

Q. How old are you, Rebecca?

A. Sixteen.

Q. Now, directing your attention to on or about the 25th day of August, 1967, did there come a time when anything unusual occurred in your neighborhood?

A. Yes, sir.

Rebecca Middleton

Q. Did there come a time when you made any
page 637 } observations concerning this unusual event?

A. Yes, sir.

Q. What did you see?

A. Well, I was down the street talking to a lady. I babysit
for.

Q. What is her name?

A. Mrs. Rotchford.

Q. Your Honor, perhaps we ought to approach the bench
for one minute?

* * * * *

Conf.

11/28/67

page 7 } Mr. Harrigan: Your Honor, we are going to have
the same motion on this girl. She is sixteen years
old and I am afraid she is going to blurt right out with
something that she is not supposed to and I ask that we
have a hearing on her outside the presence of the jury. We
do not want any prejudicial testimony to come in. She was
also at the line-up.

We submit that her testimony is going to be such that at
the scene itself, this man ran by. She could make no identi-
fication at all.

Mr. Hassan: This is for the birds.

Mr. Harrigan: I don't know what kind of an objection
that is.

Mr. Hassan: I haven't heard an objection from you yet,
just a lot of palaver—

Mr. Harrigan: I object to this. It is not becoming Mr.
Hassan.

The Court: All right. Mr. Hassan, don't make exchanges
of that type to me.

Mr. Harrigan: Your Honor, my objection is that
Conf. this girl, based on the transcript, we anticipate
11/28/67 that she is going to testify that she did see this
page 8 } defendant and can identify him as a result of a
police station identification. She was taken down
to a viewing of him and that viewing was the only time she
ever saw him and she is going to attempt to make an identi-
fication in the Courtroom, which we believe the evidence will
show is based on nothing more than the viewing and the pic-
tures shown her.

Rebecca Middleton

The Court: I will let her testify in the presence of the jury as to what she actually saw out there on the street. I think Mr. Hassan has proceeded quite properly, but when she gets to the point of her going to the police station, that is the time to suspend.

Mr. Hassan: You have already ruled. I don't think I am going to ask her about her going to the police station.

You have already ruled. I don't want to waste any time.

Mr. Harrigan: The point is, she is sixteen years old and she is liable to say anything. That is why I approached the bench.

Mr. Hassan: I think she is probably more apt to say the truth and be much more aware of her oath than the unsworn statement of counsel.

The Court: All right, gentlemen.

Mr. Harrigan: I would exercise an exception.

By Mr. Hassan:

Q. Rebecca, you said you were talking to Mrs. Rotchford. What was that address?

A. I don't know the number of the house, but I am pretty sure it is 9th Street. I am not positive.

Q. How far is that from where you live?

A. It is about—well, it is across the street. It is about three houses up.

Q. While you were there, what happened?

A. Well, I was standing there talking to her, and we were standing there talking.

The Court: All right, go ahead.

The Witness: I was standing there talking to
page 638 } her and saw this man come running by, and he
was going awful fast so that is why I turned
around.

By Mr. Hassan:

Q. Where did he come from, if you know, Rebecca?

A. I don't come—you see, you can go—

Mr. Harrigan: I object. She is not responsive. Where did he come from, if she knows.

The Court: If you know where he was coming from, the direction from which he was coming.

Rebecca Middleton

The Witness: Well, he was coming from across the street. He was over on the other side of the street.

Mr. Hassan: From where you were talking to Mrs. Rotchford?

The Witness: Yes, sir.

By Mr. Hassan:

Q. How did he cross the street? Did he cross it directly toward you or at an angle one way or the other?

A. It was an angle, but I had my back turned. I heard somebody coming down the street.

Q. Did there come a time when you saw what angle he was running at?

The Court: I am not sure she heard you.

By Mr. Hassan:

page 639 } Q. Did there come a time when you saw what angle he was running at? In other words, what street he was running towards?

A. He was running toward Liberty Street.

Q. Toward Liberty Street?

A. Yes, sir.

Q. What street was he crossing?

A. 9th Street, I think. I am not sure, though.

Q. Did you say 9th Street?

A. Yes, sir.

Q. Toward Liberty, and he came across the street from Mrs. Rotchford's?

A. Well, I was talking to Mrs. Rotchford. I was on the right hand side of the road, and he was coming from the left hand side.

Q. Now, the left hand side of the street—is that toward Wilson Boulevard or away from Wilson Boulevard?

A. That is toward Wilson Boulevard.

Q. Are there houses on that side of the street, Rebecca?

A. Yes, sir.

Q. Behind those houses, what is there?

A. There is a 7-11; there is a little shopping center.

Q. Now, when you crossed the street, did you see where he went?

A. He was headed down Liberty Street toward the park.

Rebecca Middleton

Q. Down Liberty Street toward where?

A. Toward the park.

Q. How long did you see him? How long a time?

A. Oh, it must have been just a few seconds. It was all so fast.

Q. Now, did there come a time up in your neighborhood when you talked to any policemen?

A. Yes, sir.

Q. Was it the same day?

A. Yes, sir.

Q. Do you know what time that was?

A. No, I don't. I don't remember.

Q. Was it very long after you saw the man?

A. No, I guess maybe about twenty minutes or so.

Q. About twenty minutes or so?

A. Yes, sir. I am not sure.

Q. Do you know who that police officer was?

A. No, sir.

Q. Do you remember what you told him?

A. I don't remember if it was a policeman or
page 641 } a detective that I talked to.

Q. Do you remember what you told the policeman or the detective?

A. I just told him that I just saw a man come running by.

Q. Did you give a description of the man?

A. Yes, sir.

Q. What was that description?

A. That he had dark hair and a dark coat on.

Q. Anything else?

A. No, sir, that is all I remember.

Q. Anything about how tall he was or how—

Mr. Harrigan: I object to his leading the witness. He asked what she told him. I think she can testify without his help.

Mr. Hassan: I don't think I would be leading unless I said he was seven feet, ten inches tall, Your Honor. I think asking how tall he was is not leading anybody.

The Court: I think a little bit of leading under these circumstances is harmless, and I will permit it to a limited extent. Go ahead.

The Witness: He asked me how tall he was and his weight

Rebecca Middleton

and all. I'm not very good about telling how tall
page 642 } a person is, so I said about 5'8" or so.

By Mr. Hassan:

Q. You did tell it to the policeman that day?

A. Yes, sir.

Q. Did you tell him anything else?

Mr. Harrigan: Your Honor, I object to telling the policeman anything else that day. I think he is just trying to lead the witness. I think she can testify as to her observations that day, but as to what she told somebody else later on, I don't think is proper evidence. She should be confined to her observations of the person she saw and the testimony as to his height and not what she concurred later on.

Mr. Hassan: I think she told the police officer twenty minutes after, as she just testified, is most material and proper, Your Honor.

The Court: It would be admissible as a verbal act. Go ahead.

Mr. Harrigan: Exception.

By Mr. Hassan:

Q. *It* there anything else that you told the police officers at that time?

A. I think—I am not sure if he asked me about
page 643 } how much he weighed.

Q. Did you tell anything about that to the policeman?

A. I don't remember.

Q. Did you see anybody else running?

A. No, sir.

Q. Nobody else?

A. No, sir.

Q. I have no further questions.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, when you first saw this man running, *what* his back to you?

A. I am not sure. I don't know. I am not sure, really. I turned around, I think it was after he had gotten past me.

Rebecca Middleton

He was about two more houses down. I think he turned around real quick, but I am just not sure.

Q. Did you ever see his face?

A. No, sir.

Q. The man that ran by you, did you see his face?

A. No, sir.

Q. Are you sure?

A. Yes, sir.

Q. Did he have a hat on?

page 644 } A. No, sir.

Q. Positive?

A. Yes, sir.

Q. Where was it that you saw him? Was this 9th and Liberty?

A. Yes, sir.

Q. What color pants did he have on?

A. I don't know.

Q. What color shoes?

A. I don't know.

Q. Did you see any shirt?

A. No, sir.

Q. How much do I weigh?

A. I don't know.

Mr. Hassan: If Your Honor please, I don't think that is proper cross examination. She hasn't made any testimony about weight.

Mr. Harrigan: I am just getting her opinion as to *height* and weight.

The Court: You might ask about *height*, but she didn't testify about weight or else I *migh* have missed it.

Mr. Harrigan: No.

Mr. Hassan: I don't think it would have any probative value as to *height* and weight.

The Witness: 5'9".

Mr. Harrigan: 5'9"? Let the record show that I am 6'3".

Mr. Hassan: If Your Honor please, I don't know if I can accept counsel's statement that he is 6' 3".

Mr. Morris: If you have got a tape, Your Honor, I can stand on the counsel table and measure him.

Mr. Harrigan: My driver's license. I am 6 feet, 3 inches.

Mr. Hassan: That is a self-serving thing he filled out himself, Your Honor. He has no identification at all.

Rebecca Middleton

Let's see the draft card.

Mr. Harrigan: I was taller then.

I would like to have this marked for identification.

The Clerk: Defendant's No. 1?

Mr. Harrigan: Yes.

Can you identify that?

The Witness: Yes, that is my handwriting.

Mr. Harrigan: What is that? Is that a statement that you wrote as to—

Mr. Hassan: Objection, Your Honor.

Mr. Harrigan: All right, what is that? Well, page 646 } this is cross examination.

Mr. Hassan: I don't think it is, Your Honor. I think he has to lay a proper foundation as to how he obtained this, where and when, and who was present and quite a lot of other things before he can start going into that statement.

Mr. Harrigan: I don't think so. She said it was her handwriting.

The Court: It seems to me that is exactly what he is doing is attempting to lay a foundation.

Mr. Hassan: I think he is going a little further with his questions. He hasn't asked her yet where or when or what time or how he got it.

The Court: He would have to do that before it is admitted.

Mr. Harrigan: Did you write that?

The Witness: Yes, sir.

Mr. Harrigan: What date?

The Witness: August—October 21st.

Mr. Harrigan: Look at it again. What is the date that it is dated?

Mr. Hassan: If Your Honor please, what is it dated?

The Court: She undertook to correct the testimony, page 647 } money, and I will let her do it. If it is necessary to look at that in order to tell what date you wrote it, you may do that.

The Witness: September 21st. I can't get my mind straight.

Mr. Harrigan: September 21st.

The Witness: Yes, sir.

Mr. Hassan: I am going to object to him giving the answer.

The Court: She had already said that.

Mr. Harrigan: What does that purport to represent?

Mr. Hassan: If Your Honor please, I think it is going to speak for itself.

Mr. Harrigan: I will offer it into evidence.

Mr. Hassan: I object to the improper foundation.

Mr. Harrigan: I think the foundation has been laid.

The Court: Let me see it.

For what purpose is it offered?

Mr. Harrigan: That is a statement that the witness wrote, Your Honor. She wrote it back in September which is earlier than now, and it is not exactly inconsistent.

The Court: I was going to say it appears to me to be a prior inconsistent statement. It is inconsistent with her testimony as I read it. You could cross examine if page 648 } there were an inconsistency, but I see none.

Therefore, I don't see what value it has. If there is something inconsistent between that and what she has said on the stand, you could ask her that, but I don't think that it has any probative value in itself.

Mr. Harrigan: All right, sir. I would proffer what it was by letting the reporter check it.

The Court: It is marked for identification and the record can show that you have offered it.

(The document referred to above was marked Defendant's Exhibit No. 1 for identification.)

Mr. Harrigan: All right, fine. Exception.

That is all, Your Honor.

The Court: Any more?

Mr. Hassan: Thank you very much.

The Court: Ladies and gentlemen of the jury, we will now retire for the evening, and I will see you at ten o'clock tomorrow morning. The jury is in the custody of the Sheriff.

The court will recess until ten o'clock tomorrow morning.

Mr. Hassan: If Your Honor please, do you want to tell the witnesses to come back and see if there are page 649 } any witnesses?

The Court: Ladies and gentlemen, we have recessed until ten o'clock tomorrow morning. Are there any of you who would have any difficulty being here at that time?

Mr. Hassan: Warren Goodlett is going to school. We can wait and save him until after school and Kristine is going to school. I would like to save her until after school. She and her mother.

Mary Rotchford

The Court: All right. You can work your cases around them and bring them in after three o'clock, can't you?

Mr. Hassan: I don't know about the case, Your Honor. I wouldn't have any trouble with that. It is these objections.

* * * * *

Whereupon, MARY ROTCHFORD, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and address?

A. Mary Rotchford, 6019 Ninth Street, North, Arlington.

Q. Directing your attention, Mrs. Rotchford, to August 25, 1967, did there come a time when something unusual happened in your neighborhood?

A. Well, a little neighbor of mine, a teenager, Rebecca Middleton, was standing outside my door, right on the outside and I was standing on the inside. We were talking and I became aware of a figure running diagonally across Ninth Street—I live on the north side.

The figure ran across, diagonally across Ninth Street, down my sidewalk toward Liberty and seemed to
page 654 } turn and go north on Liberty.

Q. And will you—

A. (Interposing.) Followed—excuse me.

Followed in a short interval by a young barber from the barbershop at the shopping center.

Q. And are you able to give the Court and the Jury a description of that individual?

A. Well, I remember a black raincoat, black wavy hair, and I just got a fleeting glimpse of the individual.

Q. Now, Mrs. Rotchford, I would like to have you come down here to this map, if you will, and see if you can locate your address and mark it on this map where you and Rebecca were standing at the time you referred to.

This is Wilson; Larrimore (indicating.)

A. This would be Liberty (indicating) and this house right here (indicating) I think technically it's angled—I

Mary Rotchford

think technically it has a Liberty address and if that is so, I'm in the second house facing Liberty Street, 6019.

Q. Would you write 6019. Mrs. Rotchford, where your house is?

A. If that is true, this house right here (indicating)—the entrance technically is at an angle and I think that address is on Liberty.

page 655 } Q. Now, you and Rebecca were where you have written 6019?

A. Yes sir.

Q. Where did the man come from and where did he go if you can tell us?

A. It seemed—

Mr. Harrigan: Object to what it seemed.

The Court: Mrs. Rotchford, say what you saw.

The Witness: Yes sir.

Right in through here—

By Mr. Hassan:

Q. Mark with a pen and draw a line where he went from where you first saw him to where you last saw him.

A. And then. (drawing indication)

Q. Down there?

A. Yes sir—well, just to the corner.

Q. And you saw him from—?

A. I was aware of a figure running right there. (indicating.)

Q. Right there? (indicating.)

A. Yes sir.

Q. And he went out of sight down here? (indicating)

A. Yes sir.

page 656 } Mr. Hassan: Thank you very much.
I have no further questions of this witness.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, just where were you standing; inside the door?

A. Yes sir.

Q. And was Becky standing inside the door?

A. No sir. She was outside.

Mary Rotchford

Q. Now, right outside your door, do you have any shrubbery or tree?

A. I think there's a cedar, as I face Ninth Street, standing inside my house, to the right.

Q. To the right.

A. You know, a tall cedar tree and there's some little bushy shrubs on each side of the front stoop.

Q. Does that obscure your vision when you are looking up and down or to your left?

A. Only to my left.

Q. Any trees obscure your vision to the left over to the corner?

A. There's one tree in the front between the walk and the drive.

Q. What kind of tree is that?

page 657 } A. I don't know. I think it's a Sycamore tree and the tall cedar is against the house.

Q. Now, you said you saw a figure.

Was this figure running when you saw the figure?

A. Yes sir.

Q. Was there a hat on this figure?

A. I did not see a hat.

Q. Well, are you prepared to say that there was not a hat or are you saying you don't know?

A. I'm saying I didn't see a hat.

Q. All right.

Did you say that you saw black hair?

A. Yes sir.

Q. Now, were you referring to hair low on the neck or hair on the top of the head?

A. Hair on top of the head.

Q. All right.

Then, obviously, he didn't have a hat on, is that right?

A. I guess, I didn't see one.

Q. You said there was another person that ran?

A. That was the interval after.

Q. When you say an interval, how many
page 658 } seconds are you talking about?

A. Sir, I didn't have a watch on and I wasn't close to a clock.

Q. Just approximation, if you can give one?

A. Well, approximately, maybe a city block lapse, approximately.

Q. All right.

Glenn Frazier Hall

And that would be?

A. I don't know what that would be in seconds or minutes.

Q. How many feet behind would that be?

A. Sir, I don't know.

Q. Did you happen to notice what color pants this figure had on?

A. No sir.

Q. You did not?

A. No sir.

Mr. Harrigan: That's all. Thank you.

Mr. Hassan: Thank you very much.

The Court: May the witness be excused?

Mr. Hassan: She may be excused.

The Court: You're excused and free to go.

Mr. Hassan: Mr. Hall.

page 659 } Whereupon, GLENN FRAZIER HALL, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECTION EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. Glenn Frazier Hall, 934 North Liberty Street, Arlington.

Q. Directing your attention to on or about the 25th day of August, 1967, did something unusual occur in your neighborhood?

A. Yes.

Q. What did you observe regarding that event, sir?

A. At about four or five minutes after twelve on August the 25th I pulled into my driveway—I come home for lunch and there was a truck parked in the street which belongs to a man who delivers eggs to us from the country. He comes down every Friday. And I walked to the back of my car after having pulled in the driveway. The back of the car was facing the street.

page 660 } I saw a man running and coming almost to a stop at the front of the truck. The truck was heading north, downhill, and was parked—it wasn't exactly

Glenn Frazier Hall

double-parked but it wasn't up against the curb on the east side of the street either.

My house is on the west side of Liberty Street.

The gentleman I saw running, as I say, he slowed to almost a walk, turned around and looked back up the street. He turned around so I could see his face and he looked back up the street. Then he crossed in front of the truck over to the east side of the street to the sidewalk and looked again back up the street and started running very fast down the street.

This was rather an unusual thing so I deliberately took a good look at him and watched him run I guess about a distance of about two or three, about four houses down the street.

Q. Can you describe this man, please?

A. Yes. I think so.

Q. Please.

A. He was dark *complected*; he had on a dark coat, which seemed to be a serge or a raincoat; he had on a gray cap of some sort.

page 661 } He appeared to me, when I saw him, a fairly young man about thirty years old; I guess about five feet, eight. And when he was running he seemed to be a little taller than I am and I'm five feet and eight-and-a-half.

He seemed to be running when I took a look at him and I guess that's about it.

Q. Did there come a time when you were able to identify any individual you saw pictures of in the newspaper or heard about on the radio, or otherwise, as the individual?

You can answer that yes or no.

A. Yes.

Q. And what picture did you see?

A. In a newspaper about two days later. This happened on a Friday. On a Saturday I talked to a detective. He asked me at the time if I thought I could identify the person and I said I didn't believe so.

This was the first time I seen him and it was rather a quick glance. And I believe it was Sunday, either Sunday or Monday I saw a picture in the newspaper of Mr. Patler who had been arrested in connection with the Rockwell death.

I told my wife, "You know, I told the detective I didn't think I could identify this man but this is the man, all right.

The one that I saw."

page 662 } Q. Now, Mr. Hall, will you come down here to this map, please sir, and mark where you live

Glenn Frazier Hall

by writing the address and show us with a line where you first saw the man and the direction he took and when you last saw him?

This is Liberty Street (indicating) going west.

A. Where is Liberty?

Q. This is Liberty running this way.

A. Oh. Now, there. I'm in the third house. I'm located here.

Q. What is that address?

A. 934.

Q. Write it on there, please.

A. The truck was parked right opposite my drive-way, about here.

When I first observed this gentleman running he was back of the truck and slowing down and he got to the truck and then crossed over to this sidewalk, stopped here and looked back. He crossed over here. and looked back. I looked back, too. I couldn't see anything. But, of course, if anybody was following him on this side of the street I couldn't see them because of the rise of the building. He crossed over here—.

Q. (Interposing.) Will you draw a line from page 663 } the first place you saw him to the last place you saw him.

A. Over to here, and here, and about there.

Q. About there?

A. Right.

Q. And when he was here and turned and looked back twice is when you got a real good look at him?

Mr. Harrigan: I object to that. He testified to—

Mr. Hassan: That's what he testified to and I'm—

The Court: The objection is over ruled.

Mr. Hassan: (Continuing) trying to have him indicate on the map where it was.

Mr. Harrigan: I would rather he testify.

The Witness: I got a good look when he first stopped because he turned toward me. He was running down the street. I was over here. He turned around and looked this way, and sort of stood on his tip toes and shuffled over this way and looked back again.

Mr. Hassan: Thank you very much, sir.

Glenn Frazier Hall

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, did you talk to a detective that day, on the 25th?

A. No. My wife did.

page 664 } Q. Your wife did.

And, did you come down to the police station on the 25th?

A. No, sir.

Q. (Continuing At all.

Now, did you have occasion to come to Court at any other time?

A. No.

Q. All right, Mr. Hall.

Now, you said that you were just driving into your driveway, is that right?

A. I had gotten out of the car.

Q. And you got out of the car. All right.

Now, what's on your driveway? Is it open on both sides?

A. Concrete, and open on both sides.

Q. I notice you wear glasses, Mr. Hall. Do you need glasses to drive with?

A. No.

Q. You don't have any restrictions?

A. No, sir.

Q. Are they bifocals?

A. Right.

page 665 } Q. What is your eye vision?

A. Twenty-twenty, with glasses.

Q. What is it without the glasses?

A. I don't know, but I need glasses just for reading. I can see very well without glasses.

Q. Now, this whole interval that you were discussing, how long did it take?

A. A minute or so.

Q. A minute?

A. I would guess so.

From the time that I saw him or from the time I pulled into the drive-way?

Q. From the time you saw him until the time he turned and ran.

A. A minute.

Q. All right.

Glenn Frazier Hall

Starting about right now, tell me when a minute is up, will you please?

The Court: It isn't going to work, Mr. Harrigan. There's a clock directly in front of him.

Mr. Hassan: I don't think it's going to work.

Mr. Harrigan: You wouldn't look at that clock, would you?

page 666 } The Witness: I'm not looking at it.

By Mr. Harrigan:

Q. So he stood there for a full minute. Is that what you're telling us?

A. No, he didn't stand there for a minute. From the time I saw him until the time I stopped looking at him I would guess it was not much over a minute.

Q. Now the individual—What kind of a hat did he have on?

A. It looked to me as though it was a gray cap of some sort or checkered.

Q. Checkered?

A. I wouldn't say. Possibly gray. It was a tweed or it could be either a tweed or checkered.

Q. Which was it; tweed or checkered?

A. I'm not sure. It was a gray cap.

Q. Was it light gray or dark gray?

A. Light gray or medium gray.

Q. What type of hat was it?

A. It was a cap type.

Q. Now, where did this cap hit on his forehead?

A. I can't honestly say.

page 667 } If I might interject here, you know when I first saw this gentleman, it was out of curiosity.

I wasn't looking at him from the point of something happened. It was just unusual for someone to be running. When I saw him standing and then start running, then I took a good look at him, height and so forth. But I couldn't see the cap well. He was taking off down the street.

Q. Is that the time when you weren't paying particular attention? Is that what you're telling us?

A. I got a good look at him.

Q. That's not what I asked you.

A. I know you didn't.

Glenn Frazier Hall

Mr. Hassan: I object to his arguing with the witness. Every time the witness opens his mouth he snaps back at him and that's improper.

The Court: Objection overruled.

The Witness: When he turned around and faced me on the sweep around up the street I saw the face and all.

By Mr. Harrigan:

Q. That's not the question I asked you.

A. I'll have to—I can't say with certainty the hat was; up here or there.

Q. All right.

A. It's a gray type cap.

page 668 { Q. Now, you said that there was a dark complexion. Is that what you said?

A. Yes, sir.

Q. Was the man tanned or just dark?

A. Just a brunette-type complexion.

Q. Of what nationality would you connect with that—

A. No particular—

Q. (Continuing)—that you saw?

A. No particular nationality.

Q. That you saw?

A. None at all.

Q. Then what about Mexican or Spanish type complexion; without looking?

A. He could have been of *Mediterranean* extract. But you know there are a lot of long-time Americans with dark complexions.

Q. Same type of complexion?

A. Yes.

Q. So there's nothing unusual about his complexion?

A. No. He definitely was not a redhead and his face was darker than yours.

Q. Okay.

Now, the coat that you saw. You said it was a
page 669 { dark coat?

A. Right.

Q. Was it a long coat or a short coat?

A. long coat. Fairly long coat, like a raincoat.

Q. How long was that?

A. It was a little below the knees.

Q. A little below the knees?

A. Right.

Glenn Frazier Hall

Q. You're positive of that?

A. Yes.

Q. Now, when you say a little below the knees, you're talking about an inch or two or three inches?

A. Right.

Q. Now, did you see his pants?

A. No. I didn't observe his trousers.

Q. You did not?

A. I did not observe his trousers.

Q. So you couldn't tell whether his trousers were wet or dry, could you?

A. No.

Q. Now, you said the man appeared young, about 30. Was that your statement?

A. Right.

page 670 } Q. And about, you said, about five, eight?

A. That's what I guessed him to be.

Q. And you said you were five, eight-and-a-half?

A. Right.

Q. And that he was just a little taller than you, or appeared a little taller?

A. Appeared a little taller.

Q. So he would be a little over five, eight?

A. Yes.

Q. How much taller?

A. Not very much. When a person is bouncing up and down, running they seem a little taller anyway.

Q. Now, you said that you talked to a detective, is that right?

A. Right.

Q. When was that?

A. Saturday.

Q. Did you talk to anybody on Friday; did you talk to a detective Friday?

A. My wife did and I can't recall whether somebody dropped by Friday night, but I believe I got a telephone call and was asked about being home for a detective to interview me the next morning, Saturday.

page 671 } Q. Who was that detective?

A. I don't remember his name; but he was a blonde or redhead, if I recall. He had light hair, bordering on red.

Q. Short hair or long hair or regular hair?

A. Regular hair.

Glenn Frazier Hall

Q. Regular hair?

A. Um hmm.

Q. Was it Crickenberger?

A. That's right.

Q. And you say he has regular hair. No crew cut?

A. I don't recall now. I recall it was light and he was red faced.

Q. Now you made the statement when asked whether or not you could recognize this individual something to the effect that you didn't believe so.

A. That's right. That's what I told the detective, yes sir.

Q. Then, did the detective show you some pictures?

A. No.

Q. He did not?

A. No.

Q. Now when did you first see Mr. Patler's picture in the paper or T. V. or whatever it was?

page 672 } A. It was a newspaper, and I believe it was Sunday. It may have been Monday. But I had certainly not seen his picture before I talked to the detective.

Q. You didn't see it before you talked to the detective?

A. I had not seen it before I talked to the detective.

Q. All right.

So you talked to the detective first and then you saw a picture later on?

A. Yes. A day or so later.

Q. Now you were aware when you talked to the detective that Patler had been arrested, I suppose, hadn't you?

A. Yes. I was aware somebody had been arrested.

Q. And that Patler was a suspect?

A. I think I heard the name Patler or maybe I heard somebody had been arrested.

Q. What did the detective tell you?

A. The detective didn't tell me anything. He asked me what I saw and I told him.

Q. All right.

Now this picture you saw. What did you see it on T. V.?

A. No. In the newspaper.

Q. In the newspaper. What newspaper was that?

A. I believe the Post.

page 673 } Q. Did you read the article?

A. (Continuing) Or the Sun.

Did I read the article?

Glenn Frazier Hall

Q. Yes.

A. Oh, yes.

Q. What papers do you get at your house?

A. The Post and The Sun.

Q. Now, did you see a picture in both the Post and the Sun?

A. I don't recall now. I saw his picture first in the Post. But I am reasonably sure it appeared in the Sun.

Q. Did you read the article in both the Post and the Sun?

A. I would have done that, yes.

Q. Do you think any of the facts in those articles may have influenced, or given you the benefit of hindsight?

A. Not in the slightest.

Q. Not in the slightest?

A. Not in the slightest.

Q. Now, did you discuss the case with anyone over the weekend? It must have been common talk in the neighborhood down there.

page 674 } A. Yes, with my next door neighbor and my wife and—I don't know.

Q. Your next door neighbor?

A. Sure.

Q. Who is your next door neighbor?

A. Mr. Beaty.

Q. What's his address?

A. 930.

Q. North Liberty Street?

A. North Liberty Street.

Q. And did you tell Mr. Beaty what you observed?

A. I told Mr. Beaty I had seen this gentleman run down the street, yes.

Q. Was that before you talked to the detective?

A. Yes.

Q. Now when you say "this gentleman", at that time—

A. (Interposing) A gentleman. A man.

Q. A man?

A. Right.

Q. All right.

Did Beaty ask you if you could recognize him again?

A. I believe Mr. Beaty asked about if I could identify the man or not and I told him I didn't think so.

page 675 } Q. Now, did you talk to anybody else other than Mr. Beaty about the incident?

Glenn Frazier Hall

A. When I got home I telephoned—when I got home from work that night—

Q. (Interposing) What night was that?

A. Friday night.

Q. All right.

A. You know, I went back to work without knowing anything had happened and my wife called and said "Did you say you seen someone running down the street?" I said, "Yes." And she said, "Well, Rockwell has been shot." And I told her to tell them I saw someone running.

Mr. Stoneburner, that's the egg man, his truck was out front. They were looking for the gun and I said it's possible the gun might have been tossed in the back of the truck and so I called Mr. Stoneburner up in Edinborough, Virginia, to tell him to look in his truck. When I—

Q. Were you—go ahead.

A. When I got through to Stoney I found out the state trooper had been there and I said, "Do you know Rockwell's been shot?" And he said, "I'm finding that at about now. A state trooper is here." So I talked to Stoney.

Q. What did you tell Stoney?

page 676 } A. I told him that apparently the man I saw running down the street—

Q. Excuse me.

Is the man's name Stoneburger?

A. Stoneburner. S-t-o-n-e-b-u-r-n-e-r.

Q. You told him you saw a man running down the street?

A. I told Stoney, "You know, I saw a man running down the street" and I said, "I bet it's the one that shot Rockwell."

Q. All right.

Did he ask you if you could identify him?

A. No.

Q. He didn't mention that?

A. No.

Q. Did you mention whether you could or could not, to him?

A. No. But the state trooper came on the phone.

Q. Did he ask you?

A. He asked me if I could identify him.

Q. What was his name?

A. Gee, I don't know. He told me at the time.

Q. You don't remember that?

A. I don't remember, sir.

Q. Did he ask you?

Glenn Frazier Hall

page 677 } A. Yes he asked me if I could identify him.

Q. What did you tell him?

A. I told him I didn't think so.

Q. So it was only after, sometime after you talked to the detective that you came to the conclusion that you could identify him?

A. Right.

Q. Now. Was that hat old or new, Mr.—excuse me.

Was that hat you observed old or new? Was it relatively new?

A. I wouldn't know.

Q. You wouldn't know.

Would you know if it was made out of a felt material?

A. No. I was about 50 feet from him and my drive-way was up a little bit so I was looking down on him but I would have to be closer to him than that to tell if it was felt.

Q. You say 50 feet. Was that—and then he turned and you watched then as he ran away?

A. Right.

Q. And during that period of time you saw only the back of him?

A. Right. A little bit of the side but mostly the back.

Q. Now after this state trooper, did you talk
page 678 } to anyone else?

A. You know, I may have talked to other neighbors; I don't know. Of course, everyone talked about the shooting of Rockwell. It was quite an affair in the community.

Q. And did many of them ask you what you had observed?

A. No. No. As a matter of fact the other witnesses who are here from Liberty Street, I didn't know they had seen it. I thought maybe I was the only one. But we haven't exchanged any views on that at all.

Q. You already said you talked to your wife.

A. I talked to my wife. And I don't know if it was Mr. or Mrs. Beaty came over and I told them I had seen a man running down the street while Mr. Stoney was there.

Q. Do you know James Cummings?

A. James Cummings? I don't believe so.

Q. How many men did you see running down the street that day?

A. I saw one.

Q. One. How long were you outside after you saw this one?

Glenn Frazier Hall

A. I immediately went into the house. I didn't even go out to the edge to see how far down this man was running. We have a poodle, and Toto was scratching on the door and my wife said "What delayed you, the dog wanted you to come in." And I told her I had seen a man running down the street. I saw him run about four or five houses down and went inside.

Q. Now at that time you didn't attach any special significance to the fact that you saw a man running other than the fact that a man was running, did you?

A. I attached significance in the sense that I said, "This is a very unusual thing to do. He may have been involved in something so I'm going to take a good look at him."

Q. Is that right?

A. Um hmm.

Q. And did you tell your wife that?

A. I told my wife that I took a good look at this fellow.

Q. When? When you went in the house or later on?

A. This was later when she called me at the office.

Q. Have you—never mind. Strike that.

Now, one point that I'm not sure of.

Did you contact the police?

A. No.

Q. They contacted you. What day?

A. Friday night I was contacted and asked if I would be available to talk to the detective Saturday morning?

Q. A policeman contacted you?

A. Right.

Q. Now, when did you first hear that Rockwell had been shot?

A. I got back to my office about one o'clock and my wife called and said, "Didn't you say you seen somebody running down the street?" And I said, "Yes." And she said, "Well, you know Rockwell has been shot and the police are all over the place." And I said, "If they get in touch with you, tell them I was home and I saw a man running." And I told her, "You can tell them also I saw this dark complected fellow and the gray cap and dark raincoat."

Q. You relayed that to your wife?

A. To my wife.

Q. You didn't call them yourself?

A. No.

Edgar V. Mason

Mr. Harrigan: That's all.

Mr. Hassan: Thank you, Mr. Hall.

Mr. Morris: If Your Honor please, we may want to recall Mr. Hall.

The Court: Will you give them your telephone number so they may call you later.

Mr. Morris: Would the Court request Mr. Hall
page 681 } not to discuss his testimony.

The Witness: Right.

My telephone number is JE2-1429

Mr. Morris: Thank you.

The Court: Mr. Hall, you are excused, subject to recall.

Mr. Hassan: Mr. Mason, please.

Whereupon, EDGAR V. MASON, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. Edgar V. Mason, 1028 North Liberty Street, Arlington.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when something unusual occurred in your neighborhood?

A. Yes sir.

Q. And would you tell the Court and the Jury what you observed, if anything?

page 682 } A. Well, on that day I was raking leaves on the side of my front lawn. I saw one man run down the street. I didn't pay any attention to what he looked like or anything like that and then I saw two more men following at a distance behind him and they went straight down the street and then a little later I saw the barber, Tom—the reason I recognized him is he had a white coat on and I had been in the barbershop once or twice and I saw him coming down Livingston Street and go into the second house on Larrimore Street. So I was wondering what was going on.

So when he came out, I asked him and he told me Mr. Rockwell had been shot.

Q. Now, Mr. Mason, will you please come down here and show us on this map where your house is?

On this map—this is Wilson Boulevard, sir, and this is

Edgar V. Mason

Liberty Street (indicating); this is west toward Seven Corners (indicating) and this is east toward Clarendon (indicating).

A. This is Wilson Boulevard? (indicating)

Q. Yes sir.

A. Right up here (indicating)?

Q. Yes.

Running down this way towards the park is
page 683 } Liberty Street.

A. This is down towards the park?

Q. Yes sir.

A. I would be on this corner, right here (indicating).

Q. Would you take this pen, sir, and where your address is there on that corner, mark it?

Now, would you show us, with the pen, where you first saw the first man running and when you first saw him and when you last saw him?

A. I saw him come down Liberty Street here (indicating) and go straight down this dead end street which would be Bon Air Park down here (indicating).

Q. Now would you show us where you first saw Mr. Tom, the barber,—

Mr. Morris: He said he saw two people running after him.

Mr. Hassan: I would like to show the house where he saw the barber, Tom, going to.

The Witness: The barber, Tom, came to right about here (indicating) and this is Larrimore and that would be the first house and he went right to the second house there (indicating)

By Mr. Hassan:

Q. And now, the other two men, when you first
page 684 } saw them, where were they?

A. They were back of the first man.

Q. Back of the first man.

Where did they go when you saw them last?

A. They came down the street. I didn't pay a whole lot of attention to the first or second one until I saw Tom, the barber, come down. He came down Livingston Street here (indicating) and then went over there (indicating) to the second house to use the telephone.

Mr. Hassan: Thank you very much.

Edgar V. Mason

You may take the stand.
I have no further questions.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, Mr. Mason, you say your house is right on the corner here of Liberty, and what is it—Livingston?

A. Well, actually, there's three streets there. I'm right on the corner. The address is 1028 North Liberty Street. But Livingston Street is on the side of my house and my house kind of faces Larrimore Street. It's on an angle.

Q. Where were you outside the house?

A. Outside the house raking some leaves.

Q. Would that be in the front yard?

page 685 } A. Well, it would be in the front but up more towards Ninth Street.

Q. So it would be up Liberty somewhat?

A. Yes.

Q. All right.

You say that you observed a figure running down the street?

A. Yes sir.

Q. Now, was he on your side of the street or the other side of the street?

A. Well, it wasn't on my side of the street. The man I saw was on the other side of the street, across the street.

Q. This line here (indicating) then should be over on this side of the street?

A. Yes sir.

Q. And you observed that figure running straight down to the dead end and then to the park?

A. I saw him go into the dead end street and he run straight down.

Q. Right where that red line is (indicating)?

A. Yes sir.

Q. That's Liberty at the dead end, isn't it?

A. Yes sir.

page 686 } Q. And there's a railing up across that?

A. A barricade, a dead end. The railroad comes through there.

Q. Now you say—did you happen to notice what the individual, the first individual had on?

A. No sir.

Edgar V. Mason

Q. All right.

Now then, you say you saw two other individuals?

A. Yes sir.

Q. (Continuing) Behind him.

Now, how far behind him were they?

A. I would judge about a hundred yards or something like that.

Q. Which would be about 300 feet?

A. Well, a hundred yards but I wasn't exact in measuring it. They were a little distance behind the gentleman, whoever he was.

Q. And after he ran by and into the park, did you then almost immediately observe the two behind him coming the same direction

A. Well, they were behind him and they went the same direction but just like I said I didn't pay a whole lot of attention to that until I saw the barber with the white coat on.

Q. Now, he came down Livingston?

page 687 } A. Well, he was on the side of my house at Livingston, yes, and I saw him go in the second house over there and I wondered what was going on, if they had something special down in the park.

Q. So that was four people that you saw running, is that right?

A. Well, Tom wasn't running too fast when I saw him.

Q. That's the one that came up Livingston?

A. Came down Livingston, I would say.

Q. Down.

Then up Larrimore—excuse me.

A. Yes sir.

Q. Did you happen to notice where these other two individuals ran to?

A. Well, to the best of my knowledge, they went the same way the first one went.

Q. That would be?

A. Straight down Livingston.

Q. Into the park?

A. Now, who they were, I don't know.

Q. Did you happen to see what they had on, these other two?

page 688 } A. No sir.

Q. Oh, that last statement you made, you said they went straight down Livingston. You mean Liberty Street?

Edgar V. Mason

A. Liberty Street, yes sir.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Now, Mr. Mason, did you see them go into the park?

A. No sir.

Q. You never did see them go into the park?

A. No sir.

Q. Did you see them get as far as the barricade?

Mr. Harrigan: I object to him leading his witness.

Mr. Hassan: He kept saying into the barricade. He didn't say into the park at any time.

Mr. Harrigan: He can't testify about it.

I think the witness can testify to it.

Mr. Hassan: I think the objection is perfectly uncalled for.

Mr. Harrigan: I don't.

The Court: The objection is over ruled.

I will permit redirect to cover any new ground.

I believe it's good in view of the cross examination.

Mr. Harrigan: Exception.

page 689 } By Mr. Hassan:

Q. You never did see them go into the park?

A. No sir.

Q. Did you see him go to the house?

A. The first house—

Mr. Harrigan: (Interposing) Objection.

The Court: Over ruled.

Mr. Harrigan: Exception.

The Witness: (Continuing)—that's on Larrimore Street and on Liberty, that's the house you mean?

By Mr. Hassan:

Q. That's the house.

A. Yes sir, I did see him go by the side of that house.

Q. By the side of that house?

A. Yes.

Q. Is that Mr. Colon's house?

A. Yes.

Q. Is that Mr. Colon's house?

A. Yes sir.

Carmelo Colon

Mr. Hassan: Thank you.

The Court: May this witness be excused?

Mr. Hassan: Yes, he may.

Mr. Harrigan: Yes sir.

page 690 } Whereupon, CARMELO COLON, was called
as a witness on behalf of the Commonwealth, and
having been previously duly sworn, was examined and testi-
fied as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name?

A. Carmelo Colon, 1045 North Larrimore Street.

Q. Directing your attention, sir, to the 25th day of August, 1967, did something unusual occur in your neighborhood?

A. Yes sir.

Q. And would you tell the Court and Jury what you heard, if anything?

A. I was out to the side of my house about to install a radio in the car and I heard a lot of noise like people running, chains jingling, and I heard first a bit of noise and a pause and then I saw a barber and another fellow come by the house there and shortly after that, there were policemen in the neighborhood.

Q. What time was that, sir?

A. Shortly after noon. I couldn't say exactly what time but right around in the afternoon.

Q. Would you come to the map and put your address in red where you live.

page 691 } Put in the street number.

And now, when you said you were beside the house, were you on the Larrimore side of your house or on the Liberty Street side of your house?

A. The Liberty Street side, right there (indicating).

Q. And which direction did the first man go in, if you know?

A. I know what direction he didn't go in because I didn't see the person.

Q. Which direction did he not go in?

A. I have a clear view at an angle like that and no one came by that area.

Carmelo Colon

Q. No one came by that area?

A. Not that I heard.

Q. You heard running but no one came by.

Would you draw the area where no one came by where your visibility was?

A. No one came through there (indicating).

Q. No one came through there?

A. No one alone. The first I saw go by there was a barber and he had a young fellow with him and they were running.

Q. They were the first to go through?

A. Yes.

page 692 } Q. That was the second running you heard?

A. That was the second running, that was a lot of noise there.

Mr. Hassan: Thank you very much. You may take the stand.

I have no further questions of this witness, Your Honor.

The Court: Cross examination?

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, you said you were outside doing what?

A. I had a radio that I had bought for my brother-in-law for his birthday for his car and I had the car parked there on the side street and was about to go out and install the radio.

Q. Were you in the car?

A. No, I was standing in the yard.

Q. With the radio in your hand?

A. Yes sir.

Q. Were you walking toward the car?

A. I had come out of the basement. We had a concealed entrance to the basement—

Q. (Interposing) Did you just come out of the basement?

A. No.

page 693 } I had been out there awhile. My father was coming out and I was waiting for him.

Q. How long were you out of the basement?

A. It wasn't long. It was a few minutes.

Q. And did you proceed to go directly to this car where you were going to install the radio?

A. Well, I never got to the car.

Carmelo Colon

In order to get to the car, I would have to jump over the fence as a normal thing or go around the house. Then when I heard the people running and going by, I sat the radio down and came around the front to find out what was going on.

Q. Let me go through this again.

You came out of the basement, right?

A. Yes sir.

Q. And where did you go?

A. I stood in the side yard.

Q. You stood there with the radio in your hands?

A. Yes, I was waiting for my father who was bringing an antenna and speaker and some other tools.

Q. How long were you standing there?

A. Couldn't have been over five minutes.

page 694 } Q. Could it have been something like thirty seconds?

A. Couldn't have been that short either.

Q. So you said you were standing there five minutes with the radio waiting for your father?

A. Could have been two minutes or five.

Q. Could have been two minutes?

A. Two minutes.

Q. Were you looking down in the area?

A. No, I was—

Q. *Interposint*) Where were you looking?

A. Out to the car. The car was sitting to the side.

Q. Where is the house, 1045, right here?

A. Yes sir.

Q. And where is the car?

A. On the Liberty Street side of the house where that dead end street is.

Q. Yes.

A. (Continuing) Just about directly across from the side entrance to the house.

Q. Directly across. All right.

Now, you said you saw two people running down the street?

A. Yes.

page 695 } Q. And where did they go?

A. They went right down the dead end street there. They went across my path where I could see clearly. I recognized one of the barbers, the one that used to work in

Carmelo Colon

that barbershop, Jim. And there was a young fellow that I didn't recognize and they were running and yelling to each other.

Q. Did you run anywhere?

A. Not at that time.

The first thing that occurred to me is that somebody robbed the barbershop so I went around the front of the house and I saw the owner of the barbershop.

Q. What did you do with the radio?

A. Set the radio down.

Q. Did you go out in your yard at all that day during that period of time?

A. About ten minutes afterwards, I found out what was going on. I also went into the park. I had a big dog and I was going to let him loose to be of help. I took off to the park to see what the barber was doing.

Q. How many people did you see in the park?

A. None.

I saw the barber and the friend coming. There
page 696 } was a big clearing there and a ball park and a
ball diamond. I got to the clearing and they were
coming back from the picnic area actually walking and I
walked up and saw them coming back towards my area
there.

Q. Did you go up to the shopping center?

A. Later on that evening I did.

Q. Had you been up there that day?

A. No, I had not.

I don't think I had been up there earlier that day.

Q. Did any policemen stop you in the park?

A. No.

Q. Did they stop you any place else?

A. We had quite a few around the neighborhood.

Q. I asked, did they stop you?

A. They stopped and asked whether I had seen or heard anything.

Q. Did they ask for your identification and so forth?

A. One came to the house later on and asked who I was and I showed him and he spoke to me.

Q. All right.

Now you say that you heard some running but you didn't see anybody, first running, right?

A. Right.

Raymond S. Cole

page 697 } Q. So you don't know which direction that person was going, do you?

A. No, I don't. I can only say I didn't see anybody running across there.

Q. They have kids running around there?

A. Kids, right.

Q. So it could be a kid, couldn't it?

A. Could have been the kids or the mothers chasing the kids.

Q. Now, you don't know if anybody ran by, obviously, before you got out of the cellar did you, you wouldn't know that?

A. Before I got out of the cellar, no, I wouldn't know.

Mr. Harrigan: That's all.

The Court: Any further questions, Mr. Hassan.

By Mr. Harrigan: (Interposing)

Q. Are you of Spanish descent?

A. Yes I am.

Q. How tall are you?

A. Five, nine.

Q. Would you characterize yourself as having black wavy hair?

A. Yes.

page 698 } Mr. Harrigan: That's all.

The Court: You may be excused, sir. Thank you.

Mr. Hassan: If Your Honor please, I have a matter concerning Exhibit 5G which I would like to take up with the Court.

The Court: Ladies and gentlemen, we'll take a recess of fifteen minutes. Will you please retire?

(Whereupon, the Jury was retired.)

SHORT RECESS

The Court: Next witness, Mr. Hassan.
Call the Jury.

Whereupon, RAYMOND S. COLE, was called as a witness

Raymond S. Cole

on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Raymond S. Cole, Inspector of Police.

Q. Now, sir, directing your attention to on or about the 25th day of August, 1967, did there come a time page 699 } when you had an occasion to respond to the vicinity of Washington Boulevard and Ivanhoe Street?

A. Yes sir.

Q. What time of the day or night was that, sir?

A. Approximately 12:20, twenty-five.

Q. Now, how did you happen to be there, Inspector?

A. To this particular location?

Q. Yes sir.

A. As a result of a lookout that I had heard.

Q. Where were you when you heard the first lookout?

A. I was in the Major's office on the third floor of the Police Department.

Q. And did there come a time when you left the Police Department?

A. Yes sir.

Q. What time was that, if you know?

A. Approximately 12:10.

Q. And when you arrived in the vicinity of Washington Boulevard and Ivanhoe Street, what did you see, if anything, that drew your attention to the matter that had you in that area?

A. I observed a subject, dark hair, dark trousers, walking east on Washington Boulevard on the north page 700 } side of the highway.

Q. And what was he doing, if anything?

A. He was wiping his face with a large turkish towel as I passed by.

Q. And at that time, did you recognize who you saw?

A. No sir.

Q. What did you do then, if anything?

A. Came back to take a second look. I turned in on Jeffer-

Raymond S. Cole

son Street to 15th, 15th to Illinois, Illinois to Washington Boulevard.

Q. And where did that place you with reference to the individual you had first observed?

A. I was two blocks from the original location that I saw him. He would have been two blocks up from that location, had he kept walking, we should have been just about even.

Q. And did you see him when you arrived at Washington Boulevard?

A. No sir.

Q. Did there come a time when you saw him again?

A. Yes.

Q. Where was that?

A. This was on the—he was at the bus stop on Washington Boulevard at Inglewood Street and when I say
page 701 } at the bus stop, he wasn't just standing at the bus stop, he was pacing at the bus stop, sir.

Q. What did you do, if anything?

A. Just about the time I got to him, well, I'll say within maybe twenty-five, fifteen, or so, fifteen to twenty-five feet, I guess, he took off running between 1212 North Inglewood and the house that faces Washington Boulevard, sir.

Q. Then what did you do?

A. I immediately came on the radio and gave a lookout for a subject wearing dark trousers, yellow-tan shirt and I proceeded around the block, sir.

Q. When you say you proceeded around the block, what direction on what street?

A. I went south on Inglewood Street to 11th Road, to the next street which would have been Ivanhoe.

Q. And?

A. (Continuing) Came back to Ivanhoe to Washington Boulevard.

Q. Then what did you do?

A. I started back the second time. Around the block the second time, I got maybe four or five houses down headed south when I observed Officer Davis with a subject at his car.

page 702 } The Court: What was the last thing you said?
The Witness: He had a subject, talking at his

car.

The Court: At his car?

Raymond S. Cole

The Witness: Yes.

By Mr. Hassan:

Q. Where was that?

A. Between Washington Boulevard and 11th Road.

Q. And did you talk to Officer Davis at that time?

A. No sir.

I never even stopped.

Q. Where did you go then?

A. Went back to Lint Road again, came back up to Ivanhoe, to Washington Boulevard and on the corner there was a vacant lot that was pretty well grown up and I had stopped there and had just picked up my mike to call for a unit to meet me there. We was going to search that piece of woods when I received a call to meet Officer Davis at Washington Boulevard and Harrison Street.

Q. Were there other units in the area?

A. Yes sir.

Q. About how many?

A. Do I know how many?

Q. Yes.

page 703 } A. At that time, sir, I would say six, maybe seven, eight.

Q. Six, maybe seven or eight?

A. Yes sir.

Q. Now, where was Officer Davis when you received the call to meet him?

A. At Washington Boulevard and North Harrison Streets, sir.

Q. Now, Inspector Cole, will you come here to this map and let's mark on the map what you have told us.

Mr. Morris: If Your Honor please, we stipulated to that map as to Liberty Street area and Dominion Hills Shopping Center area. We have our map which Mr. Hassan stipulated to and we prefer that Inspector Cole—there's going to be an aerial photograph brought in which shows the entire area. This is strictly a map showing one side of the area of the alleged place.

We'd like to have the entire map.

The Court: Do you have it available now?

Mr. Morris: No.

Mr. Hassan: If Your Honor please, this is a map that shows all the area that Inspector Cole has testified to.

Raymond S. Cole

If they have a map—I have spent two days to
page 704 } try to get them to designate something out of
the tax map in my office. If they have a map,
they can bring it in in cross examination.

This map shows what the Inspector testified to.

The Court: I'll permit him to mark on that map but certainly on cross examination you gentlemen have right to have him mark on any map you desire and, if you wish to recall him to mark on a map, you may.

Mr. Hassan: This does not include any aerial map which I have not seen. I may object to that.

Mr. Morris: Same way we would object to this.

The Court: You have no objection to him marking on this map, do you?

Mr. Morris: We would just as soon he didn't until we get a picture of the entire area.

This one doesn't show Patrick Henry Drive where it comes out.

The Court: Would the testimony refer to those areas?

Mr. Morris: Yes.

Mr. Hassan: Not at this time, Your Honor.

I don't know what Mr. Morris or Mr. Harrigan are going to do.

At this time everything is on this map that
page 705 } he's going to testify to.

The Court: I'll let him go ahead on direct examination but on cross examination, if you wish to have any photograph or map, you may cross examine on that subject to its admissibility.

When we discussed this matter yesterday, I understood that all you were going to do was to attach an adjoining piece of map to extend to the area you wanted.

Mr. Morris: This is correct.

But now I think we can get an aerial view of the area which *maybe* beneficial to the Court and the Jury.

Mr. Hassan: Then again it may not be, Your Honor.

By Mr. Hassan:

Q. I think you will recall that one time you said you had observed him on Washington Boulevard. Now, will you show us where this individual with the towel was the first time you saw him and mark it in red.

A. This is Washington Boulevard and this would be headed back towards Glebe Road.

Raymond S. Cole

Q. Towards Westover?

A. This is Westover (indicating). I'm sorry.

Mr. Harrigan: Let the witness testify.

Mr. Hassan: If Your Honor please, I don't
page 706 } think I ought to be jumped on by two counsels,
and one is enough, Mr. Morris. You started on
this.

Mr. Morris: All right.

Let the witness testify.

The Court: The objection is sustained.

This is Mr. Morris' witness.

The Witness: About here (indicating).

The Court: Officer, what is that corner?

The Witness: This is Washington Boulevard and Ivanhoe
Street, sir.

By Mr. Hassan:

Q. Now, with a dotted line, would you show us where you
proceeded?

A. From this location?

Q. Yes sir.

A. (indicating on map)

Q. Now, when you arrived at Washington Boulevard and
Illinois Street, where did you see the defendant?

A. After I had made this turn (indicating) sir, and
started in this direction, the bus stop—not that far back—
the bus stop here (indicating) I went in this direction (in-
dicating).

I spotted him as he went in behind 1212 Ingle-
page 707 } wood and the house facing Washington Boule-
vard in this fashion, and this house faces in this
fashion (indicating)

Q. Where did he go?

A. He went in between these houses. They are closer to-
gether than that sir. He went this direction here (indicat-
ing)

Q. Where did you go?

Show a dotted line where you went.

A. I made—it was almost a "U" turn affair and back In-
glewood Street to Eleventh Road back into Washington
Boulevard.

This is a wooded lot here.

Raymond S. Cole

Q. Then what did you do when you got—

A. (Interposing.) Then I came back this direction, came back down and about the third or fourth house, I don't recall, a cruiser was at this location and he was—Detective Davis was operating the cruiser—and he was talking to a citizen that I did not see the first time and I was looking in between these houses also trying to look in this direction and this direction.

I passed him and—you see, this is where he was at (indicating) between the third and fourth house.

Mr. Harrigan: Passed who?

The Witness: Passed Detective Davis.

page 708 } Mr. Hassan: I object again, Your Honor.
This is Mr. Morris' witness.

Mr. Morris: That's not true. Mr. Harrigan is going to handle this one.

Mr. Harrigan: Mr. Morris made an objection on the map.

Mr. Morris: That's correct. I didn't make an objection to testimony. I object to what Mr. Hassan was testifying to though.

The Court: I'm not going to let you gentlemen alter between the testimony of a single witness. Only one of you can do it.

Is it your election that Mr. Harrigan is going to handle this particular witness.

Mr. Morris: That's right.

The Court: Mr. Morris, I'll let him go ahead but you'll have to stay out of it.

By Mr. Hassan:

Q. This is the second time around?

A. Yes sir.

Q. Show us what you did then?

A. I completed the second turn around and got to this wooded section here. I pulled up at this location. I picked up the mike to call for a unit to meet me here (indicating), when I got the call to meet Detective Davis and Sergeant Moehler at Harrison Street which would be here (indicating)

page 709 }

Mr. Hassan: Now, you may go back to the stand.

The Witness: All right, sir.

Raymond S. Cole

By Mr. Hassan:

Q. Now, when you arrived at Washington Boulevard and Harrison Street, sir, what did you see, if anything?

A. When I arrived at that location, Detective Davis' car was parked alongside Washington Boulevard and on the opposite side was the subject that I had previously identified, previously described.

I pulled up alongside the cruiser and as I did, Detective Davis started walking toward me. I got out of the car and started walking over and he said something to the effect that he doesn't have any identification of any kind.

Mr. Harrigan: I object to "something to the effect" and move the remark be stricken.

The Court: Objection is sustained.

The Jury will disregard the remark regarding Detective Davis.

By Mr. Hassan:

Q. Just what you did and said.

page 710 } A. I got out of my car; the subject had his
back to me. As I got to the front of the car, he was facing the front of the car, and as I walked within some maybe three, four feet, I recognized John as being John Patler and told Davis who he was, that he was an ex-member of the American Nazi Party.

Q. And did you have any other conversation with the defendant or with anyone in the presence of the detective at that place?

A. No sir.

Q. Then what did you do?

A. I left the scene at this location and went to the scene at 6021 Wilson Boulevard.

Mr. Hassan: Now, Mr. Holcolm, will you ask them to give me Property Sheet No. 23, the property on Sheet 2379.

By Mr. Hassan:

Q. Would you take those items one by one, sir, and tell me whether or not you can identify any of them?

A. This is very similar—

Raymond S. Cole

Mr. Harrigan: I object to that. I don't think that's identifying.

The Court: The objection is sustained.

If you can positively identify it, you may do so.
page 711 } The Witness: This is similar to the towel.

Mr. Hassan: I offer this for identification as Commonwealth's Exhibit No. 8.

The Witness: This is the shirt that the man was wearing—

Mr. Hassan: (Interposing) Just a moment, Inspector.

The Witness: Sorry.

This is the shirt the man had on, sir.

I can identify it as being the tan and yellow shirt that I saw. I couldn't see these stripes when I saw it, sir, but I happened to see the shirt later on.

By Mr. Hassan:

Q. When was that later on?

A. In the Detective Bureau on a table.

Mr. Hassan: I would like to have that marked for identification as Commonwealth's Exhibit 8B.

The Witness: These trousers look similar, sir. I don't know.

Mr. Hassan: Just wait.

The Court: If you want to object to this, let me know.

Mr. Harrigan: I'm going to object to it.

He hasn't identified anything yet.

page 712 } The Court: Well, the problem is this. In the course of producing these things for identification and having them marked, the Jury can see them.

So, if you're going to object that they are inadmissible, I'm not going to permit that.

I assume, Mr. Hassan, you're going to have witnesses making positive identification and not just someone who says they look similar.

Mr. Hassan: Your Honor, he has named—I'd like to do it if I could, Your Honor, but unfortunately it's Detective Davis and Sergeant Peever and Sergeant Moehler and everybody engaged in this. Now there's got to be a beginning. I can't put them on all at once.

The Court: Do you have these things marked with tags by somebody.

Mr. Hassan: I think everybody is going to have to identify them, including the F. B. I. agents.

Raymond S. Cole

I can probably find you six or seven initials on them.

Mr. Harrigan: Whether he can find a hundred initials here on this, we would object and I don't think it's proper.

The Court: If he has initials on them and can say positively these are items he saw on the defendant page 713 } at that time or in the defendant's possession, he can testify to them. Otherwise he cannot.

Any number of shirts of that kind can fill the bill.

By Mr. Hassan:

Q. Did you initial any of these clothes?

A. No sir. I haven't initialed any of them, sir.

Q. Without taking any of them out, look into that bag and see if you can recognize them as having been worn by the man you saw at either Washington Boulevard and Iverson Street and Washington Boulevard.

A. I don't believe so, sir.

Mr. Hassan: If Your Honor please, at this time I would like to have the Court recess. I may want to call the witness who can identify them to the satisfaction of Mr. Harrigan before I resume with Inspector Cole.

Mr. Harrigan: It's pretty apparent that Inspector Cole can't identify these particular items.

The Witness: I cannot identify those particular items.

Mr. Harrigan: No matter how many witnesses come on, it's not going to help him any.

The Court: I can do it either of two ways. I can let him call somebody to make positive identification of page 714 } them or have them admitted conditionally subject to being stricken if they aren't connected up.

You don't want to do that?

Mr. Harrigan: No.

The Court: Well, this would be an appropriate time to recess any way.

Mr. Harrigan: Could I cross examine or what his testimony has been?

Mr. Hassan: I object to that, Your Honor, until I complete my direct examination.

The Court: I think it better wait until the completion of the direct examination because you're going to want to cross examine later, too.

We'll recess at this time.

Raymond S. Cole

Let the Jury retire.

(Whereupon, a short recess was taken.)

Mr. Harrigan: Before we call the Jury, we would renew our Motion to exclude any evidence concerning clothes or any evidence found on the defendant which is now about to be introduced—they've already proffered some of it—based on our prior argument that there was no probable cause for his arrest and therefore, the clothes were taken as a result of of that arrest and they should be suppressed.
page 715 } The Court: Motion denied.

Mr. Harrigan: Exception, please. And objection as stated on the grounds during the Motion and this is a continuing objection.

The Court: The objection is over ruled.

Mr. Harrigan: Exception.

The Court: All right.

(Jury Returned)

Whereupon, RAYMOND S. COLE, was recalled as a witness, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION (Continued)

By Mr. Hassan:

Q. Inspector Cole, I'm going to show you a picture and ask you whether or not you recognize what it is, please and answer yes or no?

A. Yes sir.

Mr. Hassan: I would like to have this marked Commonwealth's Exhibit 9A for identification.

(Whereupon, Commonwealth's Exhibit 9A was marked for identification.)

page 716 } By Mr. Hassan:

Q. Would you please tell us what that is a picture of, sir?

A. This is a picture looking towards Westover from North Illinois Street.

Raymond S. Cole

The Court: On what street.

The Witness: Washington Boulevard, sir.

Mr. Hassan: Washington Boulevard?

The Witness: Yes sir.

Mr. Hassan: If Your Honor please, I would like to offer this at this time.

Sergeant Schoup has been on the stand and will be back and did take this picture and will further testify to it so I'd like to offer it as Commonwealth's Exhibit 9A.

The Court: Is there objection?

Mr. Harrigan: I'd like to ask the officer one question on it—

Mr. Hassan: (Interposing.) Go right ahead.

Mr. Harrigan: (Continuing)—or two questions.

By Mr. Harrigan:

Q. You said this was a picture that was taken from the intersection of Washington Boulevard and Illinois Street?

A. Yes sir, I think that's correct.

page 717 } Q. Towards Westover?

A. Down the hill.

Q. So you would be looking down towards North Harrison, is that right?

A. No sir.

Harris is opposite.

Q. It is?

A. From Illinois, yes sir.

Q. O. K.

The Court: This will be received and marked in evidence as 9A for the Commonwealth.

(Whereupon, Commonwealth's Exhibit No. 9A was entered into evidence.)

Mr. Harrigan: When was that taken?

Mr. Hassan: August 31.

The Court: Mr. Harrigan, I won't preclude you from asking any questions of Sergeant Schoup, when he testified if you wish to do so.

Mr. Harrigan: All right, sir.

Mr. Hassan: August 31 at 2 p. m.

I would like to show this to the Jury at this time.

Raymond S. Cole

By Mr. Hassan:

page 718 } Q. Now, I show you another picture and ask
if you can identify that and just answer yes or
no?

A. This is looking—

Mr. Hassan: Just answer yes or no.

The Witness: Yes sir.

Mr. Hassan: This will be 9B for identification.

Mr. Harrigan: Was that 9B?

Mr. Hassan: That is 9B.

(Whereupon, Commonwealth's Exhibit No. 9B was marked
for identification.)

By Mr. Hassan:

Q. Now, would you tell us what 9B is?

A. This is a picture, sir, taken from the north side of
Washington Boulevard looking into 1212 North Inglewood
and the house, 2300—and I don't know the rest of the number
on Washington Boulevard, sir.

Mr. Hassan: I would like to offer this at this time, Your
Honor.

The Court: Is there objection?

Mr. Harrigan: No objection.

The Court: It will be received in evidence as Common-
wealth's 9B.

page 719 }

(Whereupon, Commonwealth's Exhibit No. 9B was entered
into evidence.)

Mr. Harrigan: That was taken?

Mr. Hassan: Same day.

Mr. Harrigan: August 31.

Mr. Hassan: Yes, this whole series.

By Mr. Hassan:

Q. Do you recognize that, sir, and please answer yes or
no?

A. Yes sir.

Raymond S. Cole

Mr. Hassan: I would like to have this marked for identification as Commonwealth's 9C.

(Whereupon, Commonwealth's Exhibit 9C was marked for identification.)

By Mr. Hassan:

Q. Would you please tell us what 9C is?

A. This is also a picture taken from the north side of Washington Boulevard looking into part of a house, 2300 block, and shows the vacant lot on the corner of Washington Boulevard, and Ivanhoe Street on the south side.

Q. Is that the wooded area to which you pre-
page 720 } viously referred?

A. This is the wooded lot, yes sir.

Mr. Hassan: I'd like to offer this at this time, Your Honor.

The Court: Is there objection?

Mr. Harrigan: No objection.

The Court: Received in evidence as Commonwealth's Exhibit 9C.

(Whereupon, Commonwealth's Exhibit No. 9C was entered into evidence.)

By Mr. Hassan:

Q. I would have you examine that and ask if you recognize it and please answer yes or no?

A. Yes sir.

Q. On Commonwealth's Exhibit 9—the one just handed to the Jury, what was that a picture of?

A. May I see it again?

The Court: Is that 9C?

The Witness: I identified that one, sir.

Mr. Hassan: I know, but the ladies and gentlemen of the Jury want to know what it's a picture of.

I'm not allowed to testify, so I'm asking you.
page 721 } The Witness: This is a picture of the wooded
lot that I testified to.

I thought that he was—this is Washington Boulevard and Ivanhoe Street.

Raymond S. Cole

By Mr. Hassan:

Q. Now, will you tell us what that is a picture of?

A. This is a picture of the same wooded lot but from a different location, further towards Westover.

Mr. Hassan: I'd like to offer that at this time, Your Honor.

The Court: Is there objection?

Mr. Harrigan: No objection.

The Court: Received in evidence as Commonwealth's 9D.

(Whereupon, Commonwealth's Exhibit No. 9D was entered into evidence.)

By Mr. Hassan:

Q. I would like to ask you whether you recognize that one; yes or no please?

A. Yes sir.

Mr. Hassan: I offer this as Commonwealth's Exhibit 9E.

page 722 }

(Whereupon, Commonwealth's Exhibit No. 9E was marked for identification.)

By Mr. Hassan:

Q. Will you please tell the Court and the Jury what that picture is?

A. This is a picture of the same location, Washington Boulevard and Ivanhoe Street, but taken just about across the street.

Mr. Harrigan: Now, across the street would be from the wooded area?

Mr. Harrigan: Yes.

The Witness: Right.

Mr. Hassan: Actually, it would be the northwest corner of the intersection.

Mr. Harrigan: All right.

Mr. Hassan: I offer that at this time, Your Honor.

The Court: Is there objection?

Mr. Harrigan: No objection.

The Court: Received in evidence as Commonwealth's 9E.

Raymond S. Cole

(Whereupon, Commonwealth's Exhibit No. 9E was entered into evidence.)

page 723 } By Mr. Hassan:

Q. I'd like to ask you if you recognize that picture and please answer yes or no?

A. Yes.

Mr. Hassan: I'd like to offer this as Commonwealth's 9F.

(Whereupon, Commonwealth's Exhibit No. 9F was marked for identification.)

Juror: This is the northwest corner of the intersection?

Mr. Hassan: (handing to Mr. Harrigan) That would not be the northwest; that would be the southwest, where he pointed to (indicating photograph).

This would be the south side of Washington Boulevard. The picture was taken from the north side of Washington Boulevard and west of the intersection on the corner back towards the wooded lot. Northwest, it would be.

Juror: Is north vertical on this plat here?

Mr. Hassan: North—the west would be here (indicating top of map) and north would be here (indicating right side of map).

Washington is going to Westover, west Ivanhoe, page 724 } going to 16th, north, Ivanhoe going to 11th and 10th south.

Juror: He said—I don't see the street.

Aren't both those pictures from the same side of the street?

Mr. Hassan: He was standing on the northwest corner pointing his camera towards the southeast corner and the picture shows the southeast corner but it was taken from the northwest corner.

By. Mr. Hassan:

Q. Now, will you please tell us what that picture is before you?

A. This is a picture taken from the north side of Washington Boulevard looking at the bus stop at Harrison Street.

This is taken from down, as I said, towards the Westover side, back to the bus stop.

Raymond S. Cole

Mr. Harrigan: That's 9F, is that right.

Mr. Hassan: That's 9F.

I would like to offer this at this time, Your Honor.

The Court: Is there objection?

Mr. Harrigan: No objection.

The Court: Received as Commonwealth's 9F.

(Whereupon, Commonwealth's Exhibit No. 9F was entered into evidence.)

page 725 } By Mr. Hassan:

Q. I'll ask you if you can identify that please, and answer yes or no?

A. Yes.

Mr. Hassan: That's 9G.

(Whereupon, Commonwealth's Exhibit No. 9G was marked for identification.)

By Mr. Hassan:

Q. Will you please tell us what that picture is that is before you?

A. This is a picture like you just saw taken from a closer location.

It's at Washington Boulevard and North Harrison Street.

Q. North what?

A. North Harrison Street.

Q. Harrison.

Mr. Hassan: I would like to offer that in evidence, Your Honor.

The Court: Is there objection?

page 726 } Mr. Harrigan: No objection.

By Mr. Hassan:

Q. Do you know what that is, sir?

The Court: Received in evidence as Commonwealth's 9G.

(Whereupon, Commonwealth's Exhibit No. 9G was entered into evidence.)

Raymond S. Cole

By Mr. Hassan:

Q. Do you know what that is, sir?

A. Yes sir.

Mr. Hassan: 9H for identification.

(Whereupon, Commonwealth's Exhibit No. 9H was marked for identification.)

By Mr. Hassan:

Q. Now, will you tell us what that picture is, sir, that's before you?

A. This is a picture taken from the north side of Washington Boulevard apparently just about in, in Harrison Street looking across at the bus stop.

Mr. Hassan: I'd like to offer this as Commonwealth's 9H.

Mr. Harrigan: No objection.

page 727 } The Court: Received in evidence as Commonwealth's 9H.

(Whereupon, Commonwealth's Exhibit No. 9H was entered into evidence.)

By Mr. Hassan:

Q. Now, Inspector Cole, how long have you known the defendant, John Patler?

A. Off and on since 1960, '61, '60, I guess.

Q. And when you saw him at Harrison Street, did you have any doubt about your identification of him?

A. No sir.

Q. Will you please describe how he looked when you saw him at Harrison and Washington Boulevard?

A. Patler had on the dark trousers, the yellow or tan shirt, whatever people may refer to it as, trousers were wet to above the knees, his shirt was wet especially in the back.

That's about it, sir.

Q. Any further description, Inspector Cole?

A. He had on tennis shoes and they were wet.

Q. Anything further you remember about the description at Harrison Street?

page 728 } A. And he had a towel strewn around his neck.

Q. At Harrison Street.

Raymond S. Cole

A. At Harrison Street, yes sir.

Mr. Hassan: I have no further questions at this time.

(Whereupon, a luncheon recess was taken.)

AFTERNOON SESSION

CROSS EXAMINATION

By Mr. Harrigan:

Q. All right, Inspector Cole, where were you around twelve o'clock on the 25th day of August?

A. Starting at about quarter of or ten of twelve, I was in the Chief's office on the third floor of the Police Department.

Q. Where is the Police Department?

A. 1424 North Uhle Street.

Q. Now, Mr. Hassan asked you did you have occasion to respond to the vicinity of Washington and Ivanhoe.

Do you recall him asking that question?

A. Yes sir.

Q. You didn't have any call at all to respond to Washington and Ivanhoe?

A. I didn't have any calls to respond anywhere, sir.

Q. All right.

Did there come a time when you left the office
page 729 } at the Police Station?

A. Yes sir.

Q. Now, when you left the office at the Police Station, around what time of the day was that?

A. Approximately 12:10, maybe 12:11.

Q. And you have your own car that you drive?

A. Yes sir.

Q. And did you go out and get in your car?

A. Yes sir.

Q. What kind of a car is it?

A. I have a Ford police car.

Q. You say a Ford police car.

A. Unmarked.

Q. All right.

It looked like any other Ford, is that right?

A. Yes sir.

Raymond S. Cole

Q. It doesn't have any siren on it, no lettering "police" or anything?

A. No lettering. It has a siren and red light.

Q. A siren and red light.

Concealed so you can't see them?

A. You can see the red light but not the siren.

Q. Where is the red light?

page 730 } A. Under the grill where you can see it.

Q. When it's off, can you see it?

A. Yes sir.

Q. That's what they determine an unmarked police car, is that right?

A. Yes sir.

Q. When you left the police station, where did you head to?

A. To Washington Boulevard and Westover area, mainly to Patrick Henry Drive, sir.

Q. Now, when you initially left the Police Station, where were you going initially?

A. Where was I initially going.

Q. That's right.

A. I can't follow you, sir.

Q. Weren't you going to Wilson Boulevard initially?

A. Yes sir. I was on Wilson Boulevard, yes sir.

Q. You were going to the scene of this shooting initially, were you not?

A. I truthfully can't answer that, sir.

Q. All right.

Didn't you change your course somewhere in Clarendon?

page 731 } A. Yes sir. I changed direction off of Wilson Boulevard if that's what you mean.

Q. That's what I mean.

A. Yes sir.

Q. Was it your intention prior to receiving a call, to continue up Wilson Boulevard, is what I'm asking.

A. I have to go back a ways to try and answer that for you.

Q. All right.

Now, you say you have to go back a ways?

A. Yes sir, if I may.

Q. Go back to where?

A. Twelve o'clock.

Q. O. K. Fine. Go back.

Raymond S. Cole

A. At about quarter of twelve or thereabouts I was called to the Chief's office on the third floor.

He wasn't in at the time and I—when I got up there I talked to Mr. Carl Johnston who used to be director of public safety here.

Captain Weekly was in the office and Mrs. Stouffer was in the office at the time.

Q. All right.

A. Shortly after noon, and I don't know the exact time, I didn't get—I think it was 12:02, 12:03 or some-
page 732 } thing along that line, on the monitor in the Chief's office, a call came in of a shooting in the sixty hundred block of Wilson Boulevard.

Q. You heard that call?

A. Yes sir.

Q. All right.

That particular call didn't identify anybody that had been shot?

A. No sir.

May I continue?

Q. After you heard that call, what did you do; anything?

A. No sir. We stayed there and listened.

Q. All right.

A. (Continuing) And there was one lookout after another which started coming out on the monitor.

Q. Was this as a result of other telephone calls coming in?

A. Sir, I never had the first telephone call if that's what you're referring to.

Q. You didn't.

But did the police?

A. I don't know what kind of telephone calls were received.

Q. You say a lookout came over the monitor?
page 733 } A. Yes sir.

Q. What was the lookout?

A. The lookout, as I testified to before, was for a white male, Mexican or Spanish descent; he had dark hair; wearing a trench coat; trousers and yellow socks.

Q. O. K.

A. That particular broadcast was rebroadcast, I guess, maybe four or five times before I ever left the office.

Q. All right.

Now, that was a white male, dark—would you say dark coat?

A. Dark clothes, yes sir.

Raymond S. Cole

Q. Dark clothes.

Was that what it was?

A. He was dark complected, dark hair, Mexican or Spanish, and he was wearing a trench coat.

Q. All right.

A. (Continuing) Not red, white, blue or pink, no sir. A little later on—

Q. (Interposing) And you also said yellow socks?

A. Yes sir.

Q. That yellow socks was in almost every broadcast of description, wasn't it?

page 734 } A. Yes sir.

Q. Then you heard several of these?

A. Then I heard several of the other units that was in the immediate area that a man was running towards the park. A number of the cars got calls to respond to the park and one of the calls that I recall, was that "he's crossing at Patrick Henry Drive, and should come out at Washington Boulevard". I remember that.

Q. All right.

But you were still in the office the whole time?

A. I was still in the office.

All this time, I was still in the office.

Q. O. K.

A. And then our radio was running at full—just about full.

Q. Now how many—were all these descriptions substantially the same?

A. All of these except one that I recall and that came from Sergeant Kodel who said that he may not be Mexican but that he's wearing dark clothing.

Q. But all had Mexican or Spanish descent and yellow socks and basically dark clothes?

A. That's right.

page 735 } Q. Did there come a time when somebody put in a call for you to come down?

A. Yes sir.

Q. And that was about ten after twelve?

A. That call came in at 12:10 as I recall or thereabouts. I listened to it on the monitor. I listened to the monitor. It came on the monitor from Sergeant Kodel who put the call out and—I wish I could remember the exact words—but he said "Get all the cars you can in the park; this is Rockwell appears; notify—call Mr. Hassan, ident., and tell In-

Raymond S. Cole

spector Cole" was the message and with that, sir, I left the office and told Mrs. Stouffer to call and say that I was on my way.

Q. You were on your way where?

A. I was on my way.

Q. Where?

A. At that particular time I suppose my intentions were to go to sixty-one, or six thousand block of Wilson Boulevard.

Q. All right.

Did you then go out and start down Wilson Boulevard towards the scene of the shooting?

A. Yes sir.

Q. Now it was pointed out that there did come page 736 } a time when you changed your direction?

A. Right, sir.

Q. How far did you get down Wilson?

A. I can't recall but it had to be around Clarendon Circle, the best I can remember, and the call at that time was again that the man is in the park, the man is in the park.

Q. Now all these calls you're talking about are on the police tape.

They came on a tape.

A. Yes sir. You remember it?

Q. I heard it.

A. Yes sir.

Q. And you recognized that the call came in that a man was in the park?

A. Yes sir.

Q. That's your recollection.

All right. Now, did there come a time when you changed your direction from Wilson Boulevard and proceeded toward Patrick Henry Drive?

A. Yes sir.

Q. All right.

And which direction did you go?

A. I never got to Patrick Henry Drive.

page 737 } Q. Well, I know that.

Which direction—where was that when you changed your direction?

A. The best I can remember I went out Clarendon Circle to Washington Boulevard and straight out Washington Boulevard when I first spotted John at Ivanhoe Street.

Q. Now, as you proceeded up Washington Boulevard, was

Raymond S. Cole

it your intention to proceed up to Patrick Henry Drive area which would be on this map?

A. Yes sir, because—

Q. (Interposing) Up in here somewhere (indicating map). It's off of this map (indicating right side).

A. Patrick Henry Drive and Washington Boulevard.

Q. Was it your intention to proceed up in this area?

A. In that area, yes sir.

Q. Was that in response to a call that the man was believed to be coming up Patrick Henry Drive?

A. Between—Officer Wolf came on the air and said get as many cars as you can on Arlington Boulevard, the man's coming through or something to that effect. This was prior to my being on the scene but where I was in between, I don't know, sir.

page 738 } Q. O. K.

But was it your intention to come down to Patrick Henry and cruise that area looking for a suspect?

A. I was going to start in that area or thereabouts, yes sir.

Q. Was it your intention to cruise that area looking for a suspect?

A. Yes sir.

Q. As you proceeded down Washington Boulevard you said that you saw an individual here on the corner of Ivanhoe and Washington Boulevard?

A. Yes sir.

Q. Which would be the north side?

A. On the north side of Washington Boulevard, yes sir.

Q. And he was proceeding?

A. Towards Glebe Road.

Q. (Continuing) Towards Glebe Road, right?

All right.

Now, when you saw that individual, did you not stop the car?

A. No sir, no sir, no sir.

In fact, I couldn't make my turn into Ivanhoe there.

Q. You've got it drawn here that you turned
page 739 } in Ivanhoe?

A. No sir.

If I have, I've got it wrong sir.

I went into Fifteenth.

Q. You went into where?

A. Fifteenth Street—correction. To Jefferson, then to Fifteenth.

Raymond S. Cole

Q. So this is wrong.

Would you come down here and correct it.

All right.

Could you just sort of cross these out (indicating).

All right.

So this area is crossed out now.

A. Yes sir.

Q. So you drove right by the area where this particular individual was walking, right here on the corner, the north side (indicating).

A. Right.

Q. (Continuing) Right?

A. Yes sir.

Q. And you proceeded down to Jefferson Street?

A. Right.

Q. And came in—took a right and came up Jefferson, is that right?

page 740 } A. Right.

Q. And then proceeded to?

A. Fifteenth Street.

Q. Up Fifteenth?

A. To—

Q. (Interposing) All the way up Fifteenth to?

A. To Illinois.

Q. To Illinois and down?

A. To Washington Boulevard?

Q. Down to Washington Boulevard, is that right?

A. Yes sir.

Q. Now, this individual here, did you happen to notice in your rear view mirror whether he was starting to cross Washington Boulevard?

A. I couldn't see him after I made the turn.

Q. Prior to making your turn, did you?

A. No sir.

Q. You didn't pay any more attention to him?

A. No sir.

As I testified before, sir, I wanted to take another look at what I saw, that's what I wanted to do.

Q. That's all.

A. Yes sir.

page 741 } Q. O. K.

Now then, you proceeded up and finally wound up on Illinois and Washington Boulevard?

A. Yes sir.

Raymond S. Cole

Q. Now, I'm showing you a picture, Commonwealth's Exhibit No. 9A which purports to be a showing from North Illinois Street on the north side of Washington Boulevard looking down towards Westover.

A. Let me see the picture.

Q. (Continuing) Is that correct?

A. This is Inglewood, sir, I believe.

Q. Well, you testified it was looking towards Westover from North Illinois Street?

A. All right.

Q. Is that right or wrong? Where is that looking from and looking to?

A. We're looking down towards Westover.

Q. From where?

A. I think—

Q. (Interposing.) What is the next street you can see there?

Can you see one?

A. I can't see one.

page 742 } Sir, I believe this is Inglewood. I must have mixed up myself.

Mr. Hassan: That's what it is.

The Witness: It's Inglewood.

Mr. Hassan: If you recall, I read you a description and you will recall I told you it was Inglewood.

By Mr. Harrigan:

Q. Well, where is Inglewood?

You say this is Inglewood looking towards Westover?

A. Yes sir.

Mr. Harrigan: I'll let the Jury look at that again so they'll know which one it is.

By Mr. Harrigan:

Q. This picture won't help you much?

A. No sir.

Q. Let's go to the map, then.

Now you stated when you got out here (indicating) to Illinois Street, approximately right in here there's a stop sign there, is that right?

A. Yes sir.

Raymond S. Cole

Q. What does this purport to be, this little dot?

A. That's what I put that there for.

Q. That's suppose to be a stop sign?

page 743 } A. (nodding affirmative)

There's only two stop signs.

Q. Now, that is a stop sign?

A. Yes sir.

Q. O. K.

Now, did you stop for it?

A. Yes sir.

Q. Did you look up the street?

A. I looked both ways, yes sir.

Q. And as you were looking down towards Westover which would be to your right, down this way, did you see anything?

A. Yes sir.

Q. What did you see?

A. You're talking about when I came back to Washington Boulevard?

Q. That's right.

You were stopped at the stop sign.

A. I didn't see anything when I stopped at the stop sign.

After I made the right turn and started down—this isn't too long a block—I spotted the subject that I had seen earlier at the bus stop at the corner of Washington

page 744 } Boulevard and Inglewood Street.

He was not standing, he was prancing when I saw him.

Q. You said pacing?

A. Well, prancing or pacing.

Q. Which was it?

A. Pacing, about the time I got to Inglewood intersection.

Q. Where were you when you first saw him? Did you see him before you pulled out?

A. I didn't see him before I pulled out, no sir.

It would have to be along somewhere in here, sir, or maybe I saw him prior to that but it was along in here or closer to the bus stop and this bus stop sits back a little ways from the intersection.

Q. All right.

Were there any other cars coming?

A. I did see one or two and as I got pretty close to John—

Q. (Interposing) All right. Now, what does pretty close to John mean, how do you mean, feet?

Raymond S. Cole

Mr. Hassan: If Your Honor please, I'm going to object to his interrupting and then repeating what he says until he stops and then let him go ahead.

page 745 } The Court: The objection is sustained.

Let him go ahead and finish his answer.

Mr. Harrigan: He's not responding to the question at this time.

Mr. Hassan: Why don't you let him go over it?

By Mr. Harrigan:

Q. As you proceed out, how close were you when you saw him at the bus stop?

A. I was maybe a mid-block or a little closer to Inglewood Street.

Q. O. K.

And you observed him and he was pacing back and forth?

A. Back and forth, yes sir.

Q. By the bus stop?

A. Yes sir, up on the grassy area.

Q. Then you stated that the man turned and went between two houses?

A. Back in between these two houses, yes sir.

Q. Did you see him go between the two houses?

A. He got out of my vision then.

Q. He got out of your vision?

A. Yes sir. He got out of my vision. As I page 746 } said, I made almost a "U" turn—not a "U" turn but almost—at the same time I was turning I was broadcasting.

Q. Then you turned to Inglewood Street?

A. Yes sir and I stayed on Inglewood to Eleventh Road.

Q. How close were you to him before he turned and went towards these two houses or between them like you say?

A. How close was I to him?

Q. Yes.

A. Fifteen, maybe twenty feet.

Q. The bus stops off that highway?

A. As I told you, he wasn't at the bus stop itself. He was closer this way.

Q. All right.

And he went back between two houses?

A. Right, sir.

Q. Did you then just turn into Inglewood and proceed down Inglewood?

Raymond S. Cole

A. Yes sir, to Eleventh Road.

I was glancing through here as I went down and I got to this location here (indicating) and tried to look back between the houses and I couldn't see anything.

I made another trip up here. This trip I made in a pretty good pace.

page 747 } Q. Before you get back around there again, I want to ask you another question.

When he was pacing around this bus stop here, was he just walking back and forth?

A. Well, yes. That or maybe a little faster than what we're doing here.

Q. Just back and forth?

A. Yes sir.

Q. So sometimes he was looking at you and at other times he had his back to you obviously?

A. Yes sir.

Q. And as he—before he turned and left the bus stop area, which direction was he, did he have his back to you before he turned?

A. As I recall, John was walking toward me and then all of a sudden he was long gone behind those two houses.

Q. Now, the impression you're trying to give us, is that he saw you?

A. I'm pretty sure he did, yes sir.

Q. You know he did?

A. I'm pretty sure he did. Put it that way.

Q. All right.

Now, you recall testifying on September 28,
page 748 } 1967?

A. Yes sir.

Q. (Continuing) Do you recall that?

A. Yes sir.

Q. Now the question was asked you:

"Question: Where did this individual go?"

"Answer: He went in—he left the bus stop and went in behind, or headed in behind 1212 North Inglewood, that's the house on Inglewood. Now this is also another house and I don't know the number. There's one house that faces Washington Boulevard at this location and he went in between those two houses and I couldn't see him once he got behind the house."

"Question: You saw him go in though?"

"Answer: Yes sir."

Raymond S. Cole

"Question: Was he walking?"

"Answer: No sir."

"Question: He was running?"

"Answer: Yes."

"Question: From you?"

page 749 } "Answer: I don't know whether he was running from me."

"Question: He didn't even know you were there, did he?"

"Answer: I can't answer that, sir, I don't know. I would think he probably did, I don't know."

Do you recall testifying to that?

A. Yes sir.

Q. Now, today you say yes he was running from you?

Mr. Hassan: If Your Honor please, he said the very same thing today that he said then.

The Court: Well—

Mr. Hassan: (Interposing) The identical thing. There's been no reason for him to say—

The Court: (Interposing) The question is objectionable but not for the reason you say.

His testimony on direct here today was that he was pretty sure John saw him.

Mr. Hassan: At this time he was made it a flat affirmative that John saw him.

That is what he said on direct examination.

Mr. Harrigan: All right.

page 750 } By Mr. Harrigan:

Q. Now, as far as whether he recognized you or not, that's an assumption on your part, isn't it?

A. He ran anyway.

Q. All right.

A. Yes sir.

Q. For one reason or another he ran?

A. Yes sir.

Q. All right.

Now, at that time then you put out a call giving a description with a yellow shirt and pants?

A. Right.

Q. Then you testified you circled around the block.

You didn't see him again, did you?

A. No, I never saw him anymore until I saw him at Harrison Street.

Raymond S. Cole

Q. You say as you circled the block you saw Detective Davis coming up the other way?

A. Yes sir.

Q. You didn't stop to talk?

A. No sir.

Q. Did you say something to the effect that he was stopped, talking to somebody?

page 751 } A. Yes.

Q. He was?

A. Yes sir.

Q. And after this, you saw this individual by the bus stop go back in toward the houses, how many minutes was it before Detective Davis called and said—

A. (Interposing) From where he was—from the time that I saw him?

Q. Yes.

A. Until the time that he called me.

Q. Is that right?

A. Probably two, maybe two or three minutes.

Q. O. K.

And Detective Davis had stopped John Patler at the bus stop two blocks up, is that right?

A. Yes sir.

Q. On North Harrison Street?

A. Yes sir.

Q. Two minutes later?

A. Yes sir.

Q. Now, you were referring to this picture, 9C, now would you tell us your impression of where that was taken from and what the purpose is to show?

page 752 } A. It was to show this wooded lot and the house on Washington Boulevard.

Q. I beg your pardon?

A. And one of the houses on Washington Boulevard, one of the houses he went in between.

Q. Where would it be taken from?

A. From the north side.

Q. Would it be taken from this area in here looking over towards this last house and the wooded lot?

A. This was taken—

Q. (Interposing) Somewhere on the north side looking over towards this house and this wooded lot.

A. Just below Inglewood Street, just down below Ivanhoe Street at an angle.

Raymond S. Cole

Q. All right.

So it would be this direction?

A. Yes sir.

Q. (Continuing) Is that right?

A. Yes sir.

Q. That wooded lot, how big is that lot? Is it overgrown there with bushes?

A. I don't know if it's one or two lots but it's a wooded area.

page 753 } Q. All right.

And that lot is just beyond?

A. Its' the next street down, Ivanhoe.

Q. It's on the same street as the bus stop, it's the same block, isn't it?

A. It would be the same block, yes sir.

Q. All right.

Now, showing you this picture, 9D.

That's a shot of the same—you can see the bus stop in this picture, can't you?

A. Yes sir.

Q. All right.

And was that a shot from the other direction?

A. This is looking up towards, closer to Westover.

Q. Now the house in this picture. Could you hold it up? I don't know whether all the Jurors can see this.

This house, is that the house on Washington Boulevard or Inglewood?

A. This is the house on Washington Boulevard, sir.

Q. You're sure of that?

A. Yes sir, I'm sure. I think. That's what it appears to me to be, sir.

page 754 } Q. Take a look at this one, too. It's the same car in both of them?

A. Yes sir. This is the wooded lot.

Q. How far is that wooded lot from that bus stop, how many feet roughly?

A. Well, roughly fifty foot, fifty-five foot.

Q. All right.

Now, approximately two minutes after this man entered this area, Detective Davis called you and said he had stopped him at the bus stop on Washington Boulevard and Harrison Street?

A. Two minutes?

Raymond S. Cole

Q. Yes.

A. No. I said from my second trip around. I never saw Detective Davis on my first trip. I never saw a cruiser. It was my second trip. I came back to check it. I didn't see him come out the back way and that's where I met Detective Davis.

Q. You thought he might have gone over into the woods?

A. Yes sir.

Q. And Detective Davis called and said he had stopped the individual at North Harrison Street and Washington Boulevard, two blocks away?

page 755 } A. He didn't say he stopped him. He said come up.

Q. I'm sorry.

In any event, he said come up and you went up?

A. Yes sir.

Q. When you got up there, was that the first time you actually recognized John Patler?

A. Yes sir.

Q. You didn't recognize him when he was pacing the bus stop?

A. No sir.

If I had recognized John, sir, when I put out my lookout, I would have put on lookout and said John Patler.

Q. That's reasonable.

You say you were only fifteen to twenty feet away when he was at the bus stop?

A. Something like that, yes sir.

Q. Now did John say anything to you when you came up to Harrison Street?

He knows you, too, doesn't he?

A. Yes sir.

Q. Did he say anything?

A. Not that I recall; nor did I talk to him either.

Q. Did you recognize him as being a former member of the Nazi Party?

page 756 } A. Of the A. N. P., yes sir.

Q. Meaning American Nazi Party?

A. I think I used the words ex-captain of the A. N. P.

Q. At that time, you told Davis that?

A. Yes sir.

Q. O. K.

And how long did you stay there?

Raymond S. Cole

A. Just—not much more than long enough to let them know who John was.

Q. O. K.

Which would be half a minute?

A. A minute, two minutes.

Q. Was Sergeant Moehler there?

A. Yes sir.

Q. What was he—he was carrying a shotgun wasn't he?

A. Not when I arrived on the scene as I can recall, sir.

Q. Were any other detectives there?

A. Yes sir. Detective Faulkner was there and Detective Davis.

Q. Davis and Sergeant Moehler. Anybody else?

A. And Faulkner.

Q. And Faulkner.

page 757 } A. Yes sir.

Q. Then you left within a short period of time?

A. Yes sir.

Q. And went to the scene, is that correct?

A. Yes sir.

Q. Now you said that you noticed his pants were wet, is that right?

A. Yes sir.

Q. How high up were these pants wet?

A. Above his knees, sir.

Q. Above his knees being (indicating) where; how high above his knees?

A. Not that high up, sir; long in there, maybe a little lower.

Q. About right there (indicating)?

A. Yes sir.

Q. What color pants did he have on?

A. He had on dark—to tell you the truth part was darker than the rest from it being wet.

Q. What color pants?

A. Gray, I suppose. Not gray but—sir, I can't answer that. It's just like the tan shirt. I'll call it tan or yellow but it would be either one—but he had on dark trousers.

page 758 } Q. Gray or dark?

A. Gray or dark.

Q. Something like that.

And what color shoes?

A. What color what?

Q. What color shoes?

Raymond S. Cole

A. Blue shoes.

The socks brought that about, sir.

Q. What color socks?

A. He didn't have yellow socks. He had on black socks as I recall. They were not yellow.

Q. You're sure they were black?

A. They were dark, dark socks.

Q. Now, after you stopped John, did you then give up looking around the neighborhood or did you continue cruising around?

A. I left there and went to the scene and I was there for awhile.

Q. Were the other police cars then and you told to continue looking or did everybody just stop?

A. No, we were searching for evidence. We still didn't have any coat that we had heard about.

page 759 } Q. Let me ask you this.

Did other police cars or other policemen continue looking for this man in the yellow socks or the Spanish, Mexican descent and dark clothes which was the original broadcast or did everybody stop looking?

A. I don't know whether that broadcast was cancelled or not.

Q. But you didn't continue looking?

A. No sir, not for an individual.

Q. O. K.

Now, what time was it that Detective Davis stopped John Patler?

A. Detective Davis didn't stop him, sir.

Q. He didn't? Who did?

A. I believe Sergeant Moehler was the first one to John, I'm not sure.

Q. Well, what time did they stop him, whoever stopped him, do you know?

A. Approximately 12:30.

Q. That would be approximately—when you say approximately 12:30, the tapes reflect that it was very close to—

A. (Interposing) 12:28 I believe was when I was called to go to the scene.

page 760 } Q. Is that right?

So that time, is almost exact isn't it?

A. (no recordable response from witness)

Q. That's approximately one-half hour?

A. Yes sir.

Raymond S. Cole

Q. After the shooting, right?

A. Yes sir.

Q. Now, how far away is North Harrison Street and Washington Boulevard from the six thousand block of Wilson Boulevard?

A. Sir, I testified to that in the preliminary hearing. I have still not measured it. I gave my answer as one mile, maybe a little more or less, I don't know, sir.

Q. Now, do you know if anyone was dispatched to cover any area beyond Wilson Boulevard, beyond the mile? I mean it's reasonable that a man can cover more than half a mile if he's moving out, can't he? Did that occur to you?

A. You mean?

Q. (Continuing) If a man is running half an hour, he can cover more ground?

A. But they were still seeing him. People were telling that he was going here and here and here.

Q. That's right.

page 761 } Who?

A. I can't answer that, sir.

Q. If anyone continued looking over on this side of Washington Boulevard in the event that he came across Washington and was heading over this way towards Glebe Road or Lee Highway?

A. I can't answer that, sir. I don't know.

Q. Did you happen to think of that at the time?

Mr. Hassan: If Your Honor please—

Mr. Harrigan: (Interposing) I withdraw the question.

Mr. Hassan: I think Mr. Harrigan heard the tape and he knows everything was pretty busy and if he's trying to find out what they're thinking—

The Court: Objection is sustained.

Mr. Hassan: I object to him pointing that hand at me.

Mr. Harrigan: Now, I don't—

The Court: (Interposing) The question is withdrawn so the objection is mute.

Go ahead.

Mr. Harrigan: All right.

By Mr. Harrigan:

Q. Now, you said the shirt he had on—what
page 762 } did you say, it was soaking wet? Did you say
wet or what?

Raymond S. Cole

A. It was soaking—I said it was wet.

Q. Was it wet in front?

A. Yes sir.

Q. Was it in the back?

A. Yes sir.

Q. Was it a long or short sleeve shirt?

A. Long and rolled up.

Q. Rolled up to where?

A. About so (indicating).

Q. Was it wet, the arms?

A. Yes sir.

Q. So the entire shirt was wet?

A. Just about, um humm.

Q. And he wasn't wet from right here up to his pants (indicating)?

A. Around his belt line. It might have been perspiration, I don't know.

Q. But this area wasn't wet?

A. No sir.

Q. And this area in the back wasn't wet?

A. Not the seat, as I recall, no sir.

Q. How about this area in the legs here (indicating)?

A. No sir.

Q. That wasn't wet and this area wasn't?

A. The shadow of being just wet was about here.

Q. On both knees?

A. Yes, both of them were wet.

Q. And that shadow came up to the knees with wetness on both of them?

A. Yes sir, as I recall.

Q. Now, the shirt, was the wet area sort of a shadow so you could distinguish or was it completely wet?

A. The back was a circled affair.

Q. What was the temperature that day, do you know?

A. August 25th, no sir, I don't know the exact temperature and I couldn't answer that.

Q. Is your car air-conditioned?

A. Sir?

Q. Is your car air-conditioned?

A. My scout car?

Q. Yes.

A. Yes sir.

Q. Then you weren't damp, I take it?

Raymond S. Cole

A. No sir.

Q. Now, just one question as to where you
page 764 } stopped.

You pulled your car up?

A. Parallel.

Q. Whose car was there?

A. As I testified before, sir, I'm not sure but I think it
would have been Detective Davis' car. It would almost have
to be. There were two cruiser cars there and my car.

Q. Where was John standing on the other side of it?

A. On the right side between the fender and the door.

Q. And Davis' car was between you and John and you're
telling us you walked around the front?

A. Yes sir. I got out of my car and walked over to John.

Q. Was he facing you when you walked over there?

A. He was, yes sir. But he wasn't when I got out of the
car.

Q. So you had no trouble when you got close enough to
know John?

A. No sir.

Mr. Harrigan: That's all for now for Inspector Cole.

The Court: Any redirect examination, Mr. Hassan?

Mr. Hassan: No redirect examination.

The Court: Inspector, let me ask you a couple
page 765 } of questions.

What color was your car?

The Witness: White car, sir.

The Court: A white car.

But otherwise unmarked as you testified?

The Witness: Yes sir.

The Court: Were you in uniform?

The Witness: Yes sir.

The Court: Did you have your cap on?

The Witness: Yes sir.

The Court: What kind of uniform do you wear?

The Witness: What I have on now.

The Court: It was a white shirt?

The Witness: Yes sir.

The Court: No jacket?

The Witness: No jacket.

My hat is like that one with the metal band, the gold one.

The Court: Was there rain as well as you can recall during

Raymond S. Cole

that half hour between the report of the shooting and the apprehension of Patler?

The Witness: No sir.

The Court: No rain?

page 766 } The Witness: It rained the night before.

The Court: Were the streets still wet?

The Witness: No sir.

The Court: All right. Thank you.

Mr. Hassan: I do have a question now, Your Honor.

The Court: All right.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. How many cars did you say were in the area?

A. Mr. Hassan, I would have to guess like I did before.

I can't recall without the work sheet but I would imagine—

Mr. Harrigan: (Interposing) I object to what he imagines.

The Witness: Scout 31, 42, 41, Traffic 1103, 11271, 76, and maybe a couple more, I can't recall.

By Mr. Hassan:

Q. Now, how many of those cars are so-called unmarked police cars?

A. Well, cruisers are unmarked. Traffic cars are unmarked. 41 and 42 would have been marked cars and 76 would have been a marked car.

Everybody else would be just about marked cars.

Q. How many white unmarked cars were in the page 767 } area?

A. I know of two others and I'm not sure of anymore.

Q. And all unmarked cars differ in color?

A. Yes.

Q. And you think your car and two others that were there were white?

A. Yes sir.

Q. And who was driving those?

A. Officer Hawkins was driving the white—he was in uniform same as I—he had a white car.

Q. And who else?

A. And I believe Detective Faulkner and there may have been another, Mr. Hassan, I'm not sure.

Raymond S. Cole

Mr. Hassan: No further questions.

RECROSS EXAMINATION

By Mr. Harrigan:

Q. Davis had an unmarked car, too, didn't he?

A. Yes sir.

Q. What color was that?

A. I can't answer that. I believe it's blue but I'm not sure. They're all different colors, sir.

Q. Now the Judge asked you a question and I was going to get into this later but since he asked you—the whole day before and the whole night before almost, it page 768 } rained, didn't it?

A. Yes sir.

Q. Do you know how many inches?

A. How many inches, itself?

Q. Yes.

A. No sir. I know we had lots of it.

Mr. Harrigan: There's one other question I forgot to get in with him and that is regarding the sidewalk, whether there is a sidewalk.

Could I get into that?

Mr. Hassan: We will stipulate that there was no sidewalk. All you have to do is go to any County Board meeting to find that out.

The Court: The photographs probably give the answer to that question.

By Mr. Harrigan:

Q. Looking at Exhibit 9D which is presumably from Ivanhoe Street looking across towards the wooded area which is the direction you say you saw—

A. (Interposing) There's no sidewalk.

Mr. Hassan: Did you say 9B, Mr. Harrigan? That's Inglewood.

Mr. Harrigan: Is that 9B?

page 769 } The Witness: 9D.

Mr. Harrigan: 9D.

Mr. Hassan: 9D is the wooded area from the northeast corner of Washington Boulevard and North Ivanhoe.

Warren Goodlett

Mr. Harrigan: Right.

By Mr. Harrigan:

Q. That's where you first saw the individual?

A. Yes sir.

Q. And the other side of the street where he proceeded to is that—there's no sidewalk at all on that side is there?

A. No sir. Not in this section. There's one down below.

Q. I'm talking about this section.

A. No sir. There's no sidewalk in there.

Q. Now, is there a path through this brush here that's used as a sidewalk or just as a path, do you know that?

A. I can't answer that because I didn't go into it, sir. I imagine it would be. I'm not sure.

Q. Do you know whether all this brush in here was wet from the night before?

A. I don't know that sir. I didn't get into the woods sir.

Mr. Harrigan: That's all.

page 770 } Mr. Hassan: Nothing further.

The Court: May he be excused?

Inspector, you're excused subject to recall.

Mr. Hassan: I'm going to change at the moment and bring in Warren Goodlett and the two we excused the other day.

Whereupon, WARREN GOODLETT, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. Warren Goodlett, 1012 North Liberty Street, Arlington, Virginia.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when something unusual happened in your neighborhood?

A. Yes.

Q. And what was that, Warren?

A. Well, you want me to tell what I saw?

page 771 } Q. What you saw and did, yes.

A. Well, I was just out in front of my house

Warren Goodlett

chopping up a Mulsa tree and I chopped it down and trimmed the branches all off and was putting them in front of my house and happened to notice somebody running down the street.

So I just glanced up and saw somebody running down the street and then a little while later a barber came down the street and asked me if I saw anybody and I told him I did and he asked me which way did he go and I told him I didn't know. He asked me what he looked like and I told him he looked, had a dark trench coat on. He asked me if he had a yellow shirt on and I told him I didn't know. He mentioned something about the yellow so I told him that I thought he looked sort of like a Mexican or South American or something but I didn't really get a good look at him, you know, I didn't know if I could say that good really to know what he looked like.

Q. Did there come a time when you did any running?

A. Yes.

Well, he said come on with me so I ran down to the bottom of the hill with him and there was another barber down there and he told this other barber what I had told him, I guess, and then apparently he told the police.

Q. Warren, will you come down here and show page 772 } us on the map just where you were working on that Mulsa tree.

You don't know your address?

A. Yes.

Q. Then just write it down, what house you think it is.

A. All right.

Q. Now from where you first saw this man to where you started running, to where he was when you last saw him, before you started running with the barber, draw a red line.

A. Where I first saw him?

Q. To where you started running with the barber.

A. As far as—when I started running with the barber, he was along—

Q. From the first time you saw him until.

A. I only saw him once. I glanced up and I didn't really pay that much attention.

Q. Where was he then?

A. He was on the other side of the street. It goes around here somewhere.

Q. When you started running with the barber, did you see the man?

Warren Goodlett

A. I didn't see him.

Q. Did you ever see him again?

A. No sir.

page 773 } Q. Show us on the map where you went with
the barber?

A. I ran with the barber down this street here (indicating) and this is a dead end street here (indicating) and this is the park over here, so I ran down here—first the other barber was here (indicating) and talked to him a little while and I didn't pay that much attention and both he and I ran down here to the dead end street and just sort of—he just seemed to think we should go right, as far as I knew. I didn't know where we was supposed to go but he sort of led me down here. I was just sticking with him.

I guess that was kind of stupid. So we turned right, here, and by the time we went to the end of the park and across the creek and everything and by the time—we went over toward the tennis courts over near Wilson Boulevard and there was a police car down there and everything.

Q. You never did see him again after he went by the Mulsa tree?

A. No sir.

Mr. Hassan: I have no further questions of this witness, Your Honor.

CROSS EXAMINATION

By Mr. Harrigan:

Q. You didn't pay too much attention at all
page 774 } to this individual that ran by you?

A. I'm afraid so.

Q. You made a statement something to the effect that somebody else told you this and you said something that somebody asked you about a yellow shirt or something?

A. It wasn't the shirt. They asked me about yellow socks.

Q. Well, let me ask you.

What was it about the yellow socks?

A. They asked me about the shirt, too.

Q. Did you know what color it was?

A. No. I couldn't be sure. I couldn't be positive.

Q. All right.

But, what was the man's name that mentioned the yellow socks to you?

Claudia Freeman

A. Jim.

Q. Cummings?

A. Yes.

Q. Did you happen to see—well, maybe I ought to ask you this:

Do you know Carmelo Colon?

A. I think so. I think I know who you mean.

Q. What does he look like?

page 775 } A. He looks sort of South American type, I think. I don't know.

Q. Did you see him that day running around anywhere?

A. Yes. He was at the bottom of the hill when we got down there. I think he was there when we also came back. I can't exactly remember now.

Q. At the bottom of the hill. Where was that?

A. At the dead end. When we were coming back from the tennis courts and we were walking our way back and the park was full of police and he was there with his hands in his pockets.

Q. When he ran down—did you see him when you ran down there?

A. I don't remember seeing him. I didn't pay attention too much.

Q. This individual that you saw running, did he have a hat on?

A. Well, I'm pretty sure he did because, as I recall, it's kind of far back in my mind, but his head wasn't bare and all I can remember is that he had on—everything was kind of dark and I noticed his head wasn't bare. He had on a dark trench coat and dark pants.

Q. How about shoes? Did he have on dark shoes?

page 776 }

A. I couldn't be sure.

Mr. Harrigan: That's all.

The Court: Any redirect, Mr. Hassan?

Mr. Hassan: No.

The Court: May he be excused?

You're excused and free to go. Thank you.

Next witness.

Mr. Hassan: Mrs. Claudia Freeman.

Whereupon, CLAUDIA FREEMAN, was called as a wit-

Claudia Freeman

ness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

A. Claudia Freeman, 1029 North Larrimore Street, Arlington, Virginia.

Q. Directing your attention, Mrs. Freeman, to the 25th day of August, 1967, did there come a time when something unusual occurred in your neighborhood?

A. Yes sir.

Q. Would you tell the Court and Jury what page 777 } you saw, if anything, that might have been connected with that?

Mr. Harrigan: Your Honor, what you saw or anything which might have been connected, call for pure speculation.

The Court: That objection is sustained.

Just ask what she saw that was unusual at that time.

By Mr. Hassan:

Q. What you saw, if anything?

A. I saw an article of clothing in my neighbor's yard.

Q. What were the articles of clothing that you saw?

A. A coat and a hat.

Q. Will up please describe the coat?

A. It was—it looked like a raincoat, a reversible one with black on one side and beige on the other side and it was—well, some people would say it was a gray hat and other people would say it was a blueish gray hat.

Q. What was the style of the hat?

A. It was a cap.

Q. What did you do when you saw these articles?

A. Well, the first time I saw them I thought maybe someone had just left them there and I didn't—

Mr. Harrigan: (Interposing) I object to her supposition, Your Honor.

The Court: The objection is over ruled.

page 778 } The Witness: And we went for a ride in the car and when we came back it was still there and

Claudia Freeman

we called Lieutenant Kodel on the phone and told him there was a coat and a hat in the yard.

By Mr. Hassan:

Q. What time was that, if you know?

A. Well, let's see. We left the house about 1:00 o'clock and I think we got back around 3:00. Whatever time it was, he came over. I don't know.

Q. Right after the time you saw this coat and hat did anything else unusual occur in your neighborhood?

A. Well, I saw the coat and hat first about 12:00 o'clock because, well, I had been, well, when I saw the coat and hat, after I saw the coat and hat there was on the television something about 1:45 that Mr. Rockwell had been killed in the shopping center and I didn't see anything other than the coat and hat there and we heard on the radio that the Police Department was looking for it.

Mr. Harrigan: I object to hearsay, what they heard.

Mr. Hassan: It's the *res gestae*, Your Honor.

Mr. Harrigan: *Res gestae*—

The Court: (Interposing) In this particular case, I think, not to show the truth but just the fact that it page 779 { was said, it should be permitted. The Jury is instructed that what she says about anything that she heard is being allowed for the fact that it was said and not as to whether or not it was true.

Mr. Harrigan: Note my exception.

The Witness: That's the reason we called Lieutenant Kodel because they said they were looking for a coat.

By Mr. Hassan:

Q. I would like to show you a picture and answer yes or no. Can you tell us what that is a picture of?

A. That's a picture of my neighbor's house.

Q. Just answer yes or no.

Can you tell us what it is a picture of?

A. Yes.

Mr. Hassan: I'd like to have that marked for identification as Commonwealth's 10A.

Claudia Freeman

(Whereupon, Commonwealth's Exhibit No. 10A was marked for identification.)

By Mr. Hassan:

Q. Now, will you tell us what that is a picture page 780 } of, please?

A. That's a picture of the house nearest to ours.

Q. That's the house you previously referred to in your testimony?

A. Yes.

Mr. Hassan: I'd like to offer this at this time as Commonwealth's Exhibit 10A.

The Court: Is there objection?

Mr. Harrigan: Yes, Your Honor.

I'd like to approach the bench.

The Court: All right.

* * * * *

Conf.

11/28/67

page 2 } Page 780, line 11, Bench Conference, should read as follows:

The Court: All right.

Mr. Harrigan: It appears that this is apparently a house where they found a coat and a hat. We object to this testimony unless the commonwealth can proffer that they can tie this coat and hat in with the coat and hat that somebody, or this man fleeing was wearing and not just saying the coat and hat was found.

Nobody has identified the coat and hat as being connected at all.

Mr. Hassan: We haven't finished trying the case yet. We're trying the case now; that's what we're here for. That's the name of the game.

Mr. Harrigan: I object to that. My objection is that before we get to the testimony about the coat and hat I think they ought to proffer or be in a position to show they're going to connect it up because I think it's too prejudicial now and I would have the court strike it.

The inference is there that somebody discarded

Conf. 11/28/67 it and if they can't connect it up I think the prejudice is so severe that it couldn't be stricken from page 3 } the jury's merely by an instruction that they should not consider it.

Mr. Hassan: This is fantastic. This gets to be ridiculous, these bench conferences.

Mr. Harrigan: I object to these comments.

Mr. Hassan: You object to everything and I couldn't care less.

The Court: All right, gentlemen.

Mr. Morris: We request that the jury be sent out and finish this matter once and for all.

Mr. Hassan: Do you want to take me out someplace? Fine.

Mr. Harrigan: I move for a mistrial because the remarks are uncalled for and prejudicial.

The Court: I don't believe the jury can hear us.

Mr. Harrigan: They're laughing. I want the record to show that the jury thinks there's something very funny going on.

The Court: Let the jury retire.

Mr. Harrigan, your objection I take it does not go to this picture but goes to the testimony of this witness?

Mr. Harrigan: Yes, Your Honor.

Conf. 11/28/67 The Court: (continuing)—in its entirety, on the theory that any reference to the coat or hat might page 4 } be prejudicial if it is not then connected up with the defendant.

Mr. Harrigan: Or with the man that was running, or connected up with the case. The mere fact that a hat and coat was found with absolutely no connection that this is the one that the individual had who was running and so forth, and I think it creates an inference that the man was running with it and another inference that he discarded it and a third inference that that is why Patler didn't have it.

It's building up one inference on top of another inference, on top of another inference without a schred of proof.

Unless they can produce some facts to connect it up to this case in some way I don't think it's proper. I'll wait until he quits rattling his papers.

Mr. Hassan: It's not disturbing me any.

Mr. Harrigan: It's disturbing me.

Mr. Hassan: I apologize for disturbing you.

Mr. Harrigan: I'll wait for you to get through.

Mr. Hassan: I will make a motion that he wait on his motion to strike until the evidence is in.

Conf. 11/28/67 The Court: Mr. Hassan, would you bide your page 5 } time until he states his objection.

Mr. Harrigan: My objection is stated.

If they do not connect up this coat and hat—I would just as soon give my objection outside the presence of the witness.

Mr. Hassan: Do you mind if I leave too?

The Court: All right.

(to the witness) Step outside and return to the witness room.

Mr. Harrigan: Unless they intend to connect this coat and hat with the defendant in this case I don't think it's relevant and I don't think it's material and we'd like them to proffer if they intend to do that, and if they don't do it, it seems to me the prejudicial effect of producing a coat and hat and not connecting it up in any way would be very prejudicial to the defendant and the fact that it's stricken later certainly would not strike it from the minds of the jury.

The inference is that whoever was running discarded it, and that's all it is; and a further inference that Patler was without a coat and therefore he's the one that discarded it, and we feel if they don't connect it up 11/28/67 in this case it's just piling one inference on top page 6 } of another inference and I don't think that's even permissible to establish circumstantial evidence.

There has to be some connecting link here.

The Court: If you were in the prosecutor's place, how would you propose to do it? In going about this in the proper order of proof would you connect it with someone, the defendant, assuming you had such a witness now? Would you begin with that man and come down to this witness? Or would you begin with this witness and connect it with the man who could connect it with the defendant?

Mr. Harrigan: The only thing I want is a proffer from the commonwealth so the court can decide whether it can be connected up or not. I think it's a question which is ordinarily discretionary with the court. In this case certainly the coat and hat found wasn't shown to a single witness who could connect it.

The Court: All right, go ahead.

Mr. Harrigan: It's a question on the order of proof. We merely request that a proffer of a connecting link is going to take place. It hasn't yet appeared and many witnesses have been on the stand whom the coat and hat Conf. could have been shown to for one reason or another 11/28/67 and we feel it will not be connected up and it's page 7 } just being paraded in and out of the courtroom as having been a coat found and we think it would be highly prejudicial.

The Court: Mr. Hassan?

Mr. Hassan: I have fought this motion since last Wednesday. This is just a renewal of that discovery bill we started with on Wednesday morning.

He's not entitled to a proffer. He's entitled to make a motion to strike if I don't get the case up. But he is not entitled to run my case nor is this court.

This is the only normal order of proof and whether or not I will tie it into the defendant, I will not proffer. But if I didn't intend to tie it up—I can nol-pros a case if I don't have a case, circumstantial or otherwise.

It's a ridiculous situation for him in every case to renew his motion to discover. If the court ordered me to proffer I wouldn't proffer. I don't have to proffer.

The Court: It appears to me the prosecution can proceed in either order it wishes to. The question that you're raising is one of relevance. When a fact has to be proved through a number of witnesses you can start at either end of the chain as long as you complete the chain. If you Conf. don't complete it then the evidence has not been 11/28/67 shown to be relevant and it can be stricken.

page 8 } The court has already ruled that he does not have to disclose in advance what his evidence will be. Therefore, I think it's proper for him to continue in this order of proof if that is the way he chooses to do it provided he connects it up as to relevency and doesn't leave it hanging as an inference in the case.

This appears to me to be the way to do it, and if that is so, that it is not connected up, the jury will be so instructed.

Now, one other thing. You gentlemen have shown such a lack of restraint during these bench conferences and in your remarks with each other that if you persist in this behavior I'm not only going to have difficulties with you, I'm not going to have any more bench conferences.

Mr. Hassan: That's all right with me. I think it's ridiculous to hold bench conferences anyway. I think it's prejudicial.

The Court: Mr. Hassan, I did not ask you for your views.

Mr. Hassan: Well, I'm giving them.

Conf. The Court: I can hear the level of your voice, 11/28/67 but I don't think the jury can hear it. But, you page 9 } have these characterizations and if they do hear you are prejudicing the position of your respective client and you're not doing them any good.

I call that to your attention and if you can't restrain yourselves from angry bench conferences I will exclude them.

Mr. Hassan: If Your Honor please, I would like for the record to show that I haven't asked for the first bench conference.

The Court: The record show what it shows.

Now, the jury—

Mr. Harrigan: (interposing) Your Honor?

The Court: I don't care to hear anymore.

The jury has just sent in a note to the effect, "We would appreciate having a north arrow on the map."

I don't know how you're going to do that. There are no course or bearing on there.

Do you propose to attach another section to it? It seems to me these come in sections some of which have north arrows.

Conf. Mr. Hassan: I think I can have the copy 11/28/67 brought in from which this one was made and page 10 } possibly transpose the arrow on to there. I wouldn't attempt to do it.

The Court: Well, would you be satisfied to have him try it, Mr. Harrigan?

Mr. Harrigan: If he knows how.

The Court: He would have to bring in some master map.

All right. Call the Jury.

* * * * *

Mr. Harrigan: We would ask the Court to inform the Jury that if they heard any of the Bench Conference this afternoon, to disregard any of the remarks.

The Court: All right.

I also propose to tell them, with respect to your Motion

that the testimony of this witness is received conditionally and that it must be connected up by the Commonwealth in order to show some connection of the hat or cap with the case and, if not, they should disregard it.

Mr. Hassan: I'm going to object to that instruction. I think the proper time for instruction is at the end page 781 } of the case.

Mr. Harrigan: I have already excepted to the Court's ruling on that Motion and do so again on the ground previously stated.

The Court: Ladies and Gentlemen of the Jury, I have two points to mention to you before we go ahead with the case.

One is: The testimony of the witness concerning the cap and the coat is admitted conditionally. That is, it will be—you may hear it and you will be able to consider it if it's ultimately connected up by other testimony to show it had some connection with the defendant in this case.

The Commonwealth may have to go through several witnesses in order to establish some connection.

If no connection is shown with this case, however, you will then be instructed to disregard it.

So I caution you as to that in advance. It's being admitted subject to being stricken out if it is shown that it has no relevancy to the case.

The other point I wish to mention to you is that counsel has occasional differences of opinion which is expressed in conferences at the bench.

If you do happen to overhear any of the conversations at the bench, it is not a part of the case. It's an explanation to me of counsel's view but it is not evidence and is not to be considered by you at all.

I hope you don't overhear but, if you do, please disregard it.

Will you now proceed?

Do you want the same witness on the stand.

Mr. Hassan: I would like to have the Court call the Jury's attention to the fact that an arrow indicating the direction has been added to the map by Mr. Kennedy from the Zoning Department, one on each side.

The Court: Can you ladies and gentlemen see that?

(Jury indicating affirmative.)

Claudia Freeman

The Court: Will you call Claudia Freeman?

Mr. Hassan: I believe I had offered in evidence—

The Court: Was there objection to the picture other than the point that you made concerning connecting it up?

Mr. Harrigan: No. That was the objection.

The Court: It will be received in evidence as Commonwealth's Exhibit 10A.

(Whereupon, Commonwealth's Exhibit No. 10A was entered into evidence.)

page 783 } Whereupon, CLAUDIA FREEMAN, resumed the stand, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. I show you this picture and ask you to answer yes or no. Do you recognize that picture?

A. Yes.

Mr. Hassan: Thank you.

I'd like to have this marked as Commonwealth's Exhibit 10B.

Mr. Harrigan: There will be an objection to that.

The Court: Do you want me to look at the picture or are you going to ask her what it is or what?

Mr. Hassan: I'm going to ask her what it is.

I don't think the objection is proper until I offer it.

The Court: Are you objecting to the witness being asked the next question as to what this picture purports to show.

Mr. Harrigan: I would like to ask her a question or two on *voir dire*. Perhaps that would cover it up.

page 784 } The Court: Go ahead.

Mr. Hassan: I would suggest you wait until they (the Jury) gets through looking at the exhibit they're now examining.

By Mr. Harrigan:

Q. Were you there when this picture was taken?

A. Yes.

Q. These two items, these items that are photographed there, you placed those items there yourself, didn't you?

Claudia Freeman

A. Yes—no, I didn't.

Q. You did not place those items in that position?

A. I did not.

Q. Had you touched those items prior to that picture being taken?

A. Yes I did.

Q. Had you moved them from a certain place?

A. Yes.

Q. Did you take them back?

A. I did not.

The police officer took them back and then he asked me if that is where I had found them and how I found them and I told him yes.

Q. So the police officer took those items some-
page 785 } where and put them back there? Is that right?

A. He took them from where I had put them and asked me where they were and I showed him and he put them down and asked me if that is how I found them and I said yes.

Q. All right.

Mr. Harrigan: I would object to it.

The Court: Your objection is that it's not the original scene that she saw but a reconstruction of it.

Mr. Harrigan: Just a reconstruction, that's correct, Your Honor.

That's my objection.

Mr. Hassan: At this point, I'll offer it because that's exactly the way I was going to ask her about it.

It was taken from the step of her house by the police officer and put back there by the police officer.

The Court: Now, Mrs. Freeman, did you see the articles before they were first removed?

The Witness: You mean did I—yes.

The Court: Before they were moved at all?

The Witness: I was the one that moved them.

The Court: Do they appear in that picture exactly as they were when you first saw them before they were moved?

The Witness: Yes. The officer asked me and he
page 786 } had it a different way and I showed him the way
it was and then he asked me if that was the way
it was and I said yes.

The Court: How long after your first finding them or seeing them there was this picture taken?

Claudia Freeman

The Witness: Well, I really don't know because it was such a long time ago.

The Court: Was it the same day?

The Witness: Yes, the same day. In fact, it was only about—the officer was at my house less than twenty minutes after I phoned. Less than that I would say. In fact, I told my husband he was there before I hung up the phone and they immediately came and got the coat and came and put it back there.

It couldn't have been more than twenty or twenty-five minutes from the time I picked them up.

The Court: Does this picture accurately represent the scene that you saw there in all respects?

The Witness: Yes sir.

The Court: The objection is over ruled.

Mr. Harrigan: Exception.

Mr. Hassan: I offer that in evidence, Your Honor.

The Court: Received in evidence as Commonwealth's 10B.

page 787 } (Whereupon, Commonwealth's Exhibit No. 10B
was entered into evidence.)

By Mr. Hassan:

Q. Now, do you recognize what that next picture is?

A. Yes.

Q. (Continuing) Please answer yes or no.

Thank you.

Mr. Hassan: This is my Commonwealth's 10C.

(Whereupon, Commonwealth's Exhibit No. 10C was marked for identification.)

Mr. Harrigan: Same objection.

Mr. Hassan: I'm offering it because they're pretty much the same picture as the police officer and the respective view of the location.

The Court: Does that picture fully and accurately portray the scene which you saw at that time?

The Witness: Do you mean when I found the coat or—do you mean did I see them take this picture?

Yes. They asked me to watch.

The Court: Are the articles there in the same position as they were in when you first saw them?

Claudia Freeman

page 788 } The Witness: Yes.

The Court: And is that the police officer who was then present when the picture was taken?

The Witness: Yes.

The Court: Is there anything else different about the scene other than the presence of the police officer?

The Witness: (indicating negative)

The Court: (Continuing) Than when you first saw the articles?

The Witness: No, except I didn't see them from this angle when I first saw them but that's how it was when I—they asked me to step up and watch when they taken the picture and that's the way it was.

Mr. Harrigan: Nobody testified to what time it was?

Mr. Hassan: The same day after about twenty minutes.

Mr. Harrigan: What time?

The Court: Can you tell us that?

The Witness: I can't say but I know it was after 3:00.

The Court: The objection is over ruled.

That will be received as 10C for the Commonwealth.

(Whereupon, Commonwealth's Exhibit No. 10C was entered into evidence.)

page 789 } Mr. Hassan: Thank you, Your Honor.

If Your Honor please, I'm not going to offer these in evidence but just for identification by this witness at this time.

By Mr. Hassan:

Q. I would like to ask you and answer yes or no please, do you recognize that picture as one you saw taken?

A. Yes.

Mr. Hassan: I'd like to have that marked for identification as Commonwealth's 10D.

(Whereupon, Commonwealth's Exhibit No. 10D was marked for identification.)

By Mr. Hassan:

Q. And do you recognize that picture as one you saw taken?

Claudia Freeman

A. 10E.

Q. And that picture is one you saw taken?

A. (nodding affirmative)

Q. 10F.

(Whereupon, Commonwealth's Exhibits No. 10E and 10F were marked for identification.)

page 790 } The Court: Do you have a question pending?
Mr. Hassan: I was waiting for them to get through with this (indicating picture), Your Honor.

By Mr. Hassan:

Q. Now, Mrs. Freeman, between the house which is shown in the picture and your house, are you the adjacent house to it?

A. Yes sir.

Q. Now, behind your house and that other house what is the nature of the terrain?

A. You mean between my house and the next?

Q. Back of your house and the back of this house.

A. Well, it's—between our two houses there's another set of houses and then there's steps that go down and then there's a street and then there's railroad tracks and then there's Bon Air Park.

Q. There's a kind of pathway or anything in the area?

A. Yes there is.

Q. Where is that located?

A. That's located behind the house where the coat was found, behind that house and one house over is the path that comes through there to Bon Air Park. It cuts across in front of the houses behind us but not the house directly
page 791 } behind me but two houses down.

Q. And on that particular day, did there come a time when you saw anyone use that method of entrance or egress from Bon Air Park?

A. No.

Q. And would you please describe to the Jury your backyard?

A. My backyard?

Q. Yes.

A. It's fenced in and I don't know what else you would like to know about it.

Claudia Freeman

Q. Is there a play area, a patio, or anything of this kind?

A. There's steps going up the back and the patio and play swings and sand pile and that's about all.

We have a screen porch.

Q. Do you have a daughter named Christine?

A. Yes I do.

Q. Was she home that day?

A. Yes she was.

Q. Was she in the house or outside?

A. At 11:30 my next door neighbor called up and wanted her to go over and play with her child and we
page 792 } were watching the Dick Van Dyke show. When it signed off, I asked if she wasn't going over to the neighbor's house to play or did she want to stay home and she said she was going and she walked to the back porch and I asked where she was going and she said she had to go outside to get something.

Q. One question I forgot to ask you:

Do you know the name of the police officer in the picture we showed to the Jury?

A. Yes I do.

Q. Who was it?

A. Lieutenant Kodel.

Mr. Hassan: No more questions of this witness.

The Court: Cross examination?

CROSS EXAMINATION

By Mr. Harrigan:

Q. Where is your house?

A. Right next door. You mean in relationship to where the coat was found?

Q. That's right.

A. Right next door.

Q. Were you in your house all day?

A. Yes. Most of the day, until 1:00 o'clock.

Q. Until 1:00?

page 793 } A. Um hmm.

Q. Then you left in the car?

A. Yes.

Q. Where did you go then?

Claudia Freeman

A. We went over to Call Carl's to get an inspection on the car.

Q. Do you recall what time you came back?

A. No, I don't. I'm sorry, I don't know. But I do know we went to Call Carl's and then we went one other place and we came back.

I know it would have to be after 3:00 o'clock.

Q. Wasn't it—excuse me.

A. (Continuing) I know it was after 3:00 and we passed the bank and I looked at the clock and I said my goodness, it's after 3:00 o'clock already.

Q. Was it closer to 4:00 o'clock?

A. Possibly. I couldn't tell you the exact time.

Q. Now, this coat you observed, was it under a bush or under a tree?

A. Well, the bush is under the tree so—I mean the tree comes up over the bush but it wasn't all the way under the bush. It was part under the bush but it was not concealed under the bush but you could say part of it was
page 794 { under the bush and part under the tree because the tree grows up over the bush but it wasn't by the trunk of the tree in relation to the tree.

Q. It was not by the tree?

A. It was not by the trunk of the tree.

Q. Now, directing your attention to 10B.

You directed the police where to put that item down, is that not so?

A. Yes. Um hmm.

Q. And Lieutenant Kodel is in this picture, 10C, is he the one that came to your house?

A. Yes he is.

Q. Is he a personal friend of yours?

A. Yes. He's not so much a friend of mine as he is a friend of my husband's.

Q. I see.

Now, that picture indicates that the coat is under that—would you call that a bush or a tree?

A. That's a big bush. At least I call it a bush because it's close to the ground. Actually, that picture is deceiving because that coat is not directly under that bush, part is out and part is under.

Q. In other words, what are you telling us,

Claudia Freeman

page 795 } that it is not an accurate reflection of what it actually portrays?

A. Yes. But you can see—you asked if this coat was under the bush. It's part way under the bush.

Q. I'll ask you, is that picture deceiving?

A. Not really but what I'm saying is, you asked if it was under the bush and I'm telling you it was not under the bush on the picture it was only part of it under the bush.

Q. All right.

What time—was your husband home?

A. Yes he was.

Q. What time did you go over and pick up these items?

A. I told you I don't know. It had to be after 3:00 o'clock that I picked them up but that's not the first time I saw them.

Q. But I asked you what time—well, you came home from Call Carl's?

A. No. From Call Carl's we went to another place but I can't remember where it was but I remember looking at a bank clock because I was surprised that so much of the time had gone by.

Q. You came home with your husband?

A. Yes.

Q. You went in the house?

page 796 } A. No.

I told my husband, you know, that the coat was still there and they're looking for a coat and hat and I wondered what we ought to do and he said we'll call Lieutenant Kodel's home and ask what he thinks and we called his home and his wife called the Police Department.

Q. So you got in touch with him?

A. Yes. He was there in five minutes. I couldn't believe he was there that fast.

Q. In the meantime, after you hung up, presumably, you went and picked up these items and brought them to your house?

A. No. I picked them up and brought them before I called the Police Department. I picked them up and brought them over and sat them in front of the bush at my house and made the telephone call.

Q. What was the condition of the coat? Was it wet or dry?

A. I didn't feel the coat but it was damp. I mean when I picked it up it was damp. It was not like you would pick up a

Claudia Freeman

dry article. I didn't touch it other than around the collar when I picked it up.

Q. Could you tell by looking whether it was damp?

A. It smelled damp.

page 797 } Q. It smelled damp?

A. Um hmm. You know how clothes smell when they get damp.

Q. Now did it—was the ground damp?

A. Where the coat was? No, not really because this tree is very, very thick, an old tree, and the rain doesn't penetrate it very well.

Q. The coat was under the bush, wasn't it, or by that bush?

A. But, you see, this tree right here and that leaves right here, that's so dense—my neighbor complains all the time because he says the rain can't ever get to the base of the tree. The tree goes over the bush.

That ground wasn't wet like in an open grass where there wasn't a tree.

Q. O.K.

Then was another police officer called down there?

A. Was Officer Kodel called?

Q. Was another police officer called down there?

A. You mean after Lieutenant Kodel came?

Q. That's right.

A. Oh yes.

page 798 } Q. About how long did it take him to get there?

A. Lieutenant Kodel?

Q. The other officer.

A. They were right there.

Q. Did they have their camera with them?

A. Yes they did. Not a camera, a big green truck of some sort.

Q. You did not take any pictures, is that correct?

A. No, I didn't.

Q. And you say they took pictures while you were there, of the coat?

A. Yes. I was standing on the driveway and Lieutenant Kodel came and got me and—

Q. (Interposing) You recall testifying September 28th?

A. Yes I do.

Q. (Continuing) When you were asked this question, sev-

Claudia Freeman

eral questions about did they take any pictures and your answer was yes.

"Question: Did you take any pictures?"

"Answer: Did I take any pictures?"

And then your answer was:

"Answer: No, but they asked before they took
page 799 } any pictures if that was where it was found."

"Question: There is no doubt that they took pictures while you were there of the coat?"

"Answer: No, they didn't take pictures when I was there."

A. No, I didn't say that. If I said no I misunderstood what you said because they told me, they indicated and asked me if I wanted the picture taken and I said no.

Q. Will you read that (transcript) and tell me if that is inaccurate then?

Do you recall those questions?

A. Yes, I do. Because when you asked me if there was any doubt if they took pictures while I was there, I thought you were referring to if they took pictures of me with the coat and I said no, they did not take any pictures of me with the coat there but I definitely saw them taking pictures.

In fact, the whole neighborhood saw them taking pictures.

Q. Now when you say the coat was—did you say it smelled?

A. Well, I don't mean it smelled like it had—you know, how
your clothes get when they get wet. If you have
page 800 } a coat on and you come in out of the rain, it has
a smell to it just like wet clothes smell, a damp
smell.

If you pick up a coat that's not damp, it doesn't have an odor to it but wet clothes do. It's not a strong odor.

Q. This particular coat, according to those pictures, is perfectly obvious from all the way across the street from where it was?

A. This coat?

Q. That's right.

A. Yes. The only thing I will say is coming up the street you can't see the coat and from the corner you can't see the coat but coming down the street and directly across the street, you can see the coat because of the way the bush is. You can't see anything for this bush, coming up the street.

Christine Freeman

Q. The picture shows it from across the street, that it's perfectly obvious?

A. Yes, from across the street, yes.

Mr. Harrigan: That's all.

Mr. Hassan: I have some questions, Your Honor.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Mrs. Freeman, I neglected to let you join page 801 } our art class.

Will you come down here and mark on the map where you live and where this house with the tree and the bush and the coat is with relation to your house.

A. I live right here (indicating).

Q. Put in the street address.

A. O.K.

1029. I live right here and this is the house and here's the bush right there and there's the tree and there's the window that I looked out of the first time I ever saw it and here's the driveway.

O.K.

There's the tree, the bush in the corner and the tree and here's the two driveways and this is our house and that is at the window I was looking out of the first time I saw it.

Mr. Hassan: Thank you very much.

The Court: Any further questions?

Mr. Hassan: No.

The Court: She may be excused?

Mr. Hassan: Certainly. May she stay in the Court Room?

Mr. Harrigan: I would object since the next witness is her own daughter which they've talked about.

page 802 } The Court: The objection is over ruled. She's been excused. She can sit in the Court Room and

I see no reason why she should not be able to.

Mr. Harrigan: Exception.

Whereupon, CHRISTINE FREEMAN, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

Christine Freeman

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

Mr. Harrigan: Your Honor, how old is the little girl?

Mr. Hassan: That's about what I'm coming to. When I get to an objectionable question, you may object and not try to run my case.

Mr. Harrigan: All right. I object.

We should have a little *voir dire*.

The Court: I'll let him lead her into *voir dire* and you may question her.

By Mr. Hassan:

Q. Christine, will you tell me your name and address?

A. Christine Freeman, 1029 North Larrimore
page 803 } Street.

Q. How old are you?

A. Eight.

Q. And what grade in school are you in?

A. Third.

Q. And do you go to Sunday School?

A. Yes.

Q. And were you down here before this week—did you come down here another day this week to the Court House?

A. Yes.

Q. And did anybody ask you to hold up your hand and take an oath?

A. Yes.

Q. Were you standing when you did that?

A. I don't know.

Q. You don't remember?

A. No.

Q. Were you with anyone?

A. Yes.

Q. Was it here in this Court Room?

A. Yes.

Q. Do you know what an oath is?

A. No.

page 804 } Q. Do you know the difference between telling
the truth and telling a lie?

A. Yes sir.

Christine Freeman

Q. And—

Mr. Harrigan: (Interposing) Excuse me, Your Honor. Since the *voir dire* is supposed to be conducted by the Court and it's—

Mr. Hassan: (Interposing) That is not true.

Mr. Harrigan: That's my impression.

Mr. Hassan: I've been here sixteen years and I never had a—and I've done it on several occasions, Your Honor.

The Court: I'll let Mr. Hassan proceed in the presence of the Jury unless she is not capable of understanding the difference between—

Mr. Harrigan: (Interposing) That's my objection and it's a Court decision.

The Court: It is and even if the Court decides the testimony may be given, it's still up to the Jury to weigh it so I think it's proper for the Jury to weigh it, too.

Objection over ruled.

Mr. Harrigan: Note my exception.

By Mr. Hassan:

page 805 } Q. Do you know the difference between telling the truth and telling a lie?

A. Yes.

Q. Where did you learn about that, Christine?

A. At home.

Q. Anywhere else?

A. At church.

Q. And what happens if you tell a lie?

A. I can't remember.

Q. You can't remember.

Now, do you remember when you held up your right hand, what the man said?

A. No sir.

Q. You don't remember what he said.

Mr. Hassan: If Your Honor please, I think the oath should be readministered and the Court should administer it.

Mr. Harrigan: Your Honor, this is the whole reason why it should be conducted *voir dire* outside the presence of the Jury.

I think the little girl has already answered the questions which should be propounded to her on *voir dire* and I think

Christine Freeman

we have a right to determine whether she's competent to testify because of her tender age, is a question I
page 806 } think we have a right to argue.

Mr. Hassan: This is a question for the Court and Discovery Motion is long over with.

The Court: Well, Mr. Harrigan, I will let you examine her in questioning, too, on this point.

I see no reason to exclude the Jury. If the Court determines she should testify, I think they could best weigh her testimony having heard this *voir dire* examination.

Do you wish to examine at this point or have me do it?

Mr. Harrigan: I see no reason to examine her at this point in view of her testimony that she can't remember what happens if she tells a lie and so forth.

I have no reason to examine her at all.

The Court: All right.

Christine, you say you're eight?

The Witness: (nodding affirmative)

The Court: Now, if you are asked to tell the truth and the whole truth and nothing but the truth, would you know what that would mean; do you know what it means to tell the truth?

The Witness: (nodding affirmative)

The Court: Do you know what it means to tell
page 807 } the whole truth? Do you know what it means to tell all of the truth?

The Witness: I don't think so.

The Court: You don't think so.

Do you know what it means to tell nothing but the truth? Do you know what it means to tell a lie?

The Witness: Yes.

The Court: What is a lie?

The Witness: It's something that's not true.

The Court: It's something that's not true.

Now, do you know whether it's right or wrong to tell lies?

The Witness: Yes.

The Court: What is it?

The Witness: It's wrong.

The Court: Why is it wrong?

The Witness: Because if you do, you may get somebody else in trouble.

The Court: That's right.

You say you go to Sunday School?

Arthur W. Stevens

The Witness: (nodding affirmative)

The Court: Have you ever heard anything in Sunday School about the Ten Commandments?

page 808 } The Witness: No sir.

The Court: Have you ever heard anything about bearing false witness?

The Witness: No.

The Court: You've never heard about that.

Do you know what happens to people who tell lies?

The Witness: No.

The Court: You gentlemen have any further questions?

Mr. Hassan: I have no further questions.

The Court: Mr. Harrigan?

Mr. Harrigan: I don't have any questions. Your Honor.

I object to your proceeding. I don't think it's proper and I'd like to put an exception into the record.

The Court: It won't be necessary.

In view of her answers, I think it would be unwise to let her testify.

Mr. Hassan: Thank you very much, Christine. You may go.

The next witness I'll call out of order. He's the only civilian we have left here today.

page 809 } Whereupon, ARTHUR W. STEVENS, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your full name, sir, and your address?

A. Arthur W. Stevens, 5602 Lee Highway, Apartment 102.

Q. What is your occupation?

A. Maintenance engineer for Better Homes Real Estate.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when you had occasion to be at the shopping center in Dominion Hills?

A. Yes sir.

Q. And do you perform services at that location?

A. I do.

Arthur W. Stevens

Q. What services do you perform?

A. Maintenance.

Q. And in connection with your maintenance work did you have an occasion to be on the roof of that shopping center?

A. Yes, on the 25th day of August. I mean, yes, the 24th day of August.

Q. The 24th day of August?

page 810 } A. Yes. I was on duty that day.

Q. What time of the day or night were you on the roof?

A. It was around, I would say, about 1:00 o'clock.

Q. 1:00 o'clock on the 24th?

A. On the 24th, yes sir.

Q. Prior to that time had you been on the roof in the period of a month or weeks or two weeks?

A. No sir.

Q. Had there been occasion for any work to have been done on that roof that you had been aware of?

A. Yes. There was work to be done on the roof before the 24th, before I was up there.

Q. Why did you go on the roof?

A. Well, they were still getting water coming in some of the stores there and I was sent up there to check and see what the problem was. In other words, I have often done this on a lot of jobs where they have a roof contract or go ahead and do the work and see then if it doesn't hold up. They send me out to find out why.

Q. Did you find out where this water was holding up?

A. Yes. What I found there was no leak. There was straps—the drainage was stopped up and air was overflowing the air ducts.

page 811 } Q. This was on the 24th?

A. The 24th day of August, 1967.

Mr. Hassan: Thank you sir.

No further questions.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now there are a combination of roofs up there, isn't there?

Edmund A. Faulkner

A. Yes. They's each unit has its own roof and then there's are separation of a little wall between.

Q. Which one were you on?

A. Well, that day I was on all of them from one end to the other. While I was there, I checked all the drains, see, on each.

Q. Did you clean the drains out?

A. Yes. Cleaning all the drains on the roof. I was cleaning. Water was standing in there about six inches deep.

Q. That was on the sewer?

A. Yes.

Q. When you cleaned the drains, that allowed the water to run off?

A. Yes.

Q. So did it run off satisfactorily?

page 812 } A. Well, you see, the idea was the draining had stopped up and water piled up and was running over and down through the air ducts.

Q. So when you cleaned out these things which were stopped up, did that solve the problem?

A. Yes.

Mr. Harrigan: No further questions.

The Court: May the witness be excused?

Mr. Morris: Yes, Your Honor.

The Court: All right, sir, you're free to go.

Mr. Hassan: Detective Faulkner.

Whereupon, EDMUND A. FAULKNER, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Edmund A. Faulkner, Detective, Arlington County Police Department.

Q. Directing your attention, sir, to the 25th page 813 } day of August, 1967, what tour of duty were you working?

A. Eight to four.

Edmund A. Faulkner

Q. Were you driving a police vehicle?

A. I was.

Q. What vehicle were you driving?

A. Cruiser 113. That's a '66 white Ford, four-door.

Q. And that was known as an unmarked police vehicle?

A. It is.

Q. Now, did there come a time when you had occasion to see the defendant, John Patler, on that day?

A. I did.

Q. When and where did you see him?

A. Washington Boulevard and Harrison Street.

Q. What was your occasion for being at that location?

A. I had copied a communication over the radio of a lookout for an individual—

Mr. Harrigan: Objection, Your Honor. It's hearsay.

The Court: Over ruled on the fact of utterance.

It was what was said to him.

Mr. Harrigan: All right.

By Mr. Hassan:

Q. And then what did you do after you received the communication?

page 814 } A. I proceeded to the area in Arlington County and was—

Q. (interposing) What time did you receive this communication?

A. Well, I can't give you the exact time. It was something shortly after twelve, in the afternoon.

Q. After twelve in the afternoon.

A. Um hmm.

Q. And between that time and the time that you saw John Patler, had you received other communications?

A. This had been coming over the radio, yes.

Q. Now, when you saw the defendant at Harrison and Washington Boulevard, who else was present?

A. Detective Davis and Sergeant Moehler.

Q. When you arrived there, what did you do if anything?

A. I pulled my car in the rear of the vehicle which Detective Davis had been driving and parked it; got out and walked to Detective Davis and Sergeant Moehler and they were talking—had Mr. Patler, and were talking with him.

Q. What did you do then, if anything?

Edmund A. Faulkner

A. I had been just standing there in the—with the group approximately, I would say maybe a minute or it may be short a few seconds one way or the other, page 815-816 } and Sergeant Moehler was standing to the right of Mr. Patler, to my right.

Inspector Cole drove up to the scene. When he drove up, Davis walked toward his car. When he did that, Mr. Patler was standing near a vehicle, leaned back and shortly right after that when he took his hand off the car, I told him to put his hand back on the car and then at that time I asked him for the right hand and the left hand and I put handcuffs on him.

Q. Why did you put handcuffs on him?

A. He was similar to the subject of the communication on the radio.

Mr. Harrigan: I didn't hear that.

Mr. Hassan: He said he was similar to the subject of the communication from the radio.

Mr. Harrigan: I move to strike that. It's a conclusion of the witness and why put the handcuffs on him—it was obvious at this point that he was under arrest.

It's a conclusion of the witness based on hearsay description. It's not admissible at this stage. It's certainly his opinion on it.

The Court: The objection was not made to the question. The question should have been asked him for a reason for taking this action and his reason could only be a page 817 } conclusion.

Mr. Harrigan: Then I move to strike the question and the answer.

The Court: Over ruled.

Mr. Harrigan: Exception.

By Mr. Hassan:

Q. And then what happened, if anything, sir?

A. I handcuffed him and we put him in the rear of Detective Davis' car.

I rode in the back and Detective Davis drove and we proceeded back to the scene and then we got near the scene on Wilson Boulevard, we was ordered to drive directly to the Violations Bureau.

Q. Now will you describe how the defendant looked in re-

Edmund A. Faulkner

gards to appearance and dress at the time you saw him at Harrison Street and Washington Boulevard?

A. Well, he had a yellow type, yellow colored type shirt on and I don't remember exactly what kind of a stripe it had, some kind of a pin stripe in it; and dark trousers and, I believe, canvas type shoes, if my memory is correct.

Q. Anything else?

A. He had a towel, a white towel.

Q. What was the nature of his appearance?

page 818 } A. He had been running. He was—

Mr. Harrigan: I object to the conclusion.

He wasn't even there. He came up when the other officers had him.

How did he know he had been running or walking?

The Court: The objection is sustained and the Jury will disregard that. That's a supposition.

Mr. Hassan: You mean as to the running?

The Court: As to the running.

Mr. Hassan: What about the appearance? Is that stricken, too?

The Court: No.

Mr. Hassan: (Interposing) Go ahead and strike the appearance, too.

The Witness: He was perspiring from the neck and the shoulders and the shirt was wet, into this area, and on the shoulder blade and the trousers may have been that far above the knees (indicating).

By Mr. Hassan:

Q. Will you stand down here in front of the Jury and point the distance above the shoes where the trousers were wet?

A. I would say somewhere around here (indicating)

Q. Now, did I understand you to say that you
page 819 } rode in Detective Davis' car when you left Harrison Street and Washington Boulevard?

A. That's correct, sir.

Q. Where did you go?

A. We proceeded down, I believe, Harrison Street and then to Wilson, out Wilson—well, the vicinity of sixty hundred block where a uniformed man came out and told us to go directly to the Violations Bureau.

Edmund A. Faulkner

Q. What was the purpose of going to the Violations Bureau, if you know?

A. To advise the subject, have him advised of his constitutional rights by the Special Justice.

Q. And did there come a time when you arrived at Police Headquarters?

A. We did.

Q. And was he then taken to the Violations Bureau?

A. No. He was taken first to the Police Department and the Violations Bureau is closed between 12:30 to 1:30, lunch time, and there was no one in.

We had to wait until the Violations Bureau opened.

Q. Where was he taken to in the Police Department?

A. To the third floor of the Detective Bureau.

Q. Where was he taken on the third floor?

page 820 } A. Into the interview room and the assignment office.

Q. Were you with him until the Violations Bureau opened?

A. I was not right with him. I was in the area of Mr. Patler.

Q. And did you go with him when he went to the Violations Bureau?

A. I did.

Q. Now, would you describe to the Court and Jury what occurred at the Violations Bureau?

A. He was taken over and the Special Justice read a paper to him, the constitutional rights bit, that is on paper and we made a little tape of it.

We cut the tape while he was reading this copy.

Q. Then what happened, if anything?

A. He was carried back to the Police Department.

Q. Did the defendant say anything in connection, or do anything in connection with the signing of this paper?

A. I don't remember anything like that.

Q. And you said he was taken back to the Police Department?

A. To the Detective Bureau.

Q. And did you remain with him then?

page 821 } A. No, I did not.

After 1:00, he was taken back and I did not remain with him at all times after that.

Q. Did there come a time when you left Headquarters?

A. I left Headquarters? Right.

Edmund A. Faulkner

Q. Do you know what time that was?

A. No, I don't.

Mr. Hassan: I have no further questions of this witness, Your Honor.

The Court: Cross examination?

CROSS EXAMINATION

By Mr. Harrigan:

Q. Was anybody else with you when you went over to the Violations Bureau?

A. Detective Davis, Detective Shoup and Detective Peever.

Q. Now, when you arrived up at Washington Boulevard and Harrison Street, John Patler was already leaning over a car or standing by a car, wasn't he?

A. That's correct, sir.

Q. Sergeant Moehler was there?

A. That's correct, sir.

Q. Did he have a shotgun on him?

page 822 } A. He had a shotgun.

Q. And Detective Davis was there?

A. He was.

Q. Was he leaning over the car?

A. Detective Davis you're talking about?

Q. John Patler.

A. He had his hands on the car, yes.

Q. Had he been searched?

A. I couldn't tell you that. If he had been—I mean, I can't say.

Q. You don't know?

A. I don't know.

Q. What position was he in when you got there?

A. Hands on the car.

Q. With feet back?

A. No. His feet wasn't—he was just standing there pretty near erect, I assume.

Q. You say his face was perspiring.

Is that what you said?

A. Yes.

Q. Was it wringing wet?

A. It was wet.

Edmund A. Faulkner

Q. If he would have wiped his face with that
page 823 } towel, it would have wiped right off, wouldn't it?

A. I would think so, yes.

Q. Now, you were driving a what? A '66 white Ford un-
marked?

A. I was.

Q. And what time was it that you arrived at North Harrison Street and Wilson Boulevard, Washington Boulevard?

A. I don't know. I recollect it was shortly after 12:00 o'clock when I got the call. When I came back on the air from South Glebe Road and 16th Street and then I got the communication on the radio and I was asked to go up in the area.

Q. Excuse me—The question I asked you was, what time did you arrive at North Harrison Street and Washington Boulevard, if you know?

A. I would say some fifteen, twenty minutes after 12:00 o'clock.

Q. So you would say about a quarter after twelve or ten after?

A. Somewhere along there.

Q. And Patler was there?

A. Patler was there when I arrived. I can't tell you the exact time I arrived, no, but I said I would guess
page 824 } it took me from anywhere from fifteen to twenty minutes to get up there.

Q. Could it have been as late as 12:30?

A. I don't believe it could have been that late.

Q. You don't think so?

A. No.

Q. He wasn't apprehended until 12:28. You know that, don't you?

Mr. Hassan: If Your Honor please, there's no such thing. If Your Honor please, that's not a representation of what has been testified to and, in fact, Mr. Harrigan ought to know that's not even the accurate time.

The Court: The objection is over ruled.

Mr. Hassan: Exception, please.

The Court: Go ahead.

By Mr. Harrigan:

Q. Are you aware of that time figure at all?

A. No, I don't recollect 12:28. No, I don't recollect that time figure at all?

Edmund A. Faulkner

Q. Have you listened to the tapes?

A. No, I have not.

Q. You haven't?

A. No.

page 824-A } Q. Now, did you hear the tape that Davis
had stopped Patler; did you hear that one?

A. Yes, I heard the tape where Davis said he had a man there, yes.

Q. And where were you when you heard that?

A. Approximately a block, a block and a half away.

Q. All right.

Now a block or a block and a half away—where were you?

A. West of Harrison Street. Probably, I believe around Inglewood, on Inglewood Street. I believe I come out on Inglewood Street. I might have come out on Illinois. I just don't remember which street I came out on. I had been in that area circling around. To tell you which street I came out on, I don't remember.

Q. What time was Rockwell shot, do you know that?

A. I couldn't tell you. I don't know the exact time.

Q. You don't know?

A. No, I don't.

Q. As a matter of fact, you weren't even on your radio half the time.

Were you out of your car someplace?

page 825 } A. After I came in service, which was shortly
after twelve at 16th and South Glebe Road, I
was in my car until I got out of my car.

Q. What does that mean? You were in your car until you got out of your car.

A. I was in the car and the radio was on until I was out of service.

Q. What do you mean out of service? By out you mean out of your car so you don't know what was going on?

A. It would be on the tape.

I went out, I would think, twenty-five to thirty-five minutes.

Q. You went out of service some twenty-five to thirty-five minutes, right?

A. Right, on South Glebe Road.

Q. Prior to going out of service had you heard of the Rockwell shooting?

Edmund A. Faulkner

A. No sir.

Q. So you didn't know about it until twenty-five or thirty-five minutes—strike that.

When you first heard about it, after you got back in your car, is that when you first heard about it?

A. That's correct, at 16th and South Glebe Road.

Q. When did you get back in your car?

page 826 } A. Shortly after 12:00 o'clock.

Q. And that's the first time you ever heard about it?

A. That's correct.

Q. All right.

Now, you said that you responded to some sort of a communique. Was that some sort of a communique from Inspector Cole?

A. No, it was from the dispatcher.

Q. From the dispatcher?

A. Right.

Q. All right.

How far is Harrison Street and Washington Boulevard from the six thousand block of Wilson Boulevard?

A. Strictly as a guess—I have never run the speedometer on the thing—I would say probably eight-tenths to a mile around the road.

Q. Roughly a mile?

A. I would say something like that. Strictly a guess. I never run it on a speedometer.

Q. Now, you stated that you were looking around somewhere in here, is that right, after you got back in service you said you heard something had happened?

A. I came up Glebe Road and Arlington Boulevard.
page 827 } vard.

Q. Where's Glebe Road, down here somewhere (indicating)?

A. South—Glebe Road runs north and south. I came up Glebe Road to Arlington Boulevard and made a left turn on Arlington Boulevard. That's Route 50 west.

Q. Arlington Boulevard is over here someplace?

A. Right. And I went up Arlington Boulevard to Carlyn Spring Road, made the circle on Carlyn Spring Road to Kensington Street, out Kensington Street to, I believe it's Eighth, a left on Eighth to Lexington Street, out Lexington Street, crossed over Wilson Boulevard.

Edmund A. Faulkner

Q. You crossed Wilson Boulevard where?

A. I crossed Lexington Street and went up to—

Q. Which is it?

A. I went over to Lexington and then I—I don't know if it's Jackson—I run Ninth into a dead end and got into Fairfax Drive. There's only one street goes through there. It curves around and then I crossed over there and that's when the communication came out from Inspector Cole when I was right in that area and then I started crisscrossing streets in there riding around.

Q. Let me ask you something.

Can you get through to this street from this place (indicating) or is that a dead end?

page 828 } A. You can make a left and cross over to Fairfax Drive.

Q. Right here (indicating)?

A. Yes.

Q. Is that the way you came?

A. Yes.

And then I made a left turn and started working those side streets in there and I was—

Q. (Interposing) That would be right in here (indicating)?

A. I don't know whether I was on Inglewood or Illinois Street.

Mr. Hassan: May I suggest instead of Mr. Harrigan pointing to where he doesn't know what he's talking about that he let the witness come down and explain where he's talking about on the map.

The Court: You may.

By Mr. Harrigan:

Q. Go ahead.

A. I came—

Mr. Hassan: (Interposing) Start where the map starts, back where you talked about Eighth Road.

The Court: Can you stand aside so the Jury may see.

The Witness: I started on Lexington, on in here to Ninth Road and come out here and hit Fairfax Drive
page 829 } and came across here and I don't know whether I came up—I might have came up one block or

Edmund A. Faulkner

maybe two blocks and down back here and I was in this area. I circled around in here a couple of times, if my memory is correct.

I was along in here when the call came out from Inspector Cole. So I started up here and I run from this way—

Mr. Harrigan: (Interposing) I'm not asking where you ran from because you don't know.

Mr. Hassan: He's asking about the radio communication and I object to this argument with the witness, Your Honor.

The Court: Mr. Harrigan, the objection is sustained.

Mr. Harrigan: I'm just asking where he went.

By Mr. Harrigan:

Q. You came somewhere over there?

A. Right.

And I came over here (indicating). I don't know which one of the streets—whether I came up Illinois or Inglewood. I was off of Washington Boulevard when I heard Davis on the air when he said he was at Harrison and as soon as I made a right turn—

Q. (Interposing) When you were in this area here (indicating) were any police cars over here (indicating)?

A. There were some police cars but I observed
page 830 } some police cars—

Q. You did?

A. Yes.

Q. Do you know how many?

A. No, I passed one or two.

Mr. Harrigan: That's all.

The Court: Any further questions, Mr. Hassan?

Mr. Hassan: No further questions, Your Honor.

The Court: You're excused.

All right.

Ladies and Gentlemen, we'll recess until tomorrow morning.

There comes a time in a case as long and drawn out as this when there is a natural human tendency to start coming to some tentative conclusion and begin to start sifting things out in your mind.

I said this to you at the outset but it bears repeating. Try to keep a completely open mind. Do not come to any conclusions about the case because you're a long way from hearing

John Wright

all the testimony and even then you must hear the instructions of the Court and then counsel will sum up evidence so I ask you to keep an open mind to the end.
page 831 } Let the Jury retire.

(Whereupon, at 6:20 p.m., the hearing was recessed, to reconvene Friday, December 1, 1967.)

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page 833 }

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The Court: Will you call the jury?

(The jury is polled.)

Mr. Hassan: John Wright.

Whereupon, JOHN WRIGHT was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. My name is John Wright. I live at 181 Williams Street, Alexandria.

Q. What is your occupation, Mr. Wright?

A. I am a painter by trade.

Q. Do you engage in roofing?

A. Yes, sir, I do some roof repairs.

Q. Now, did there come a time when you did some roof repairs on the block of stores in the 6000 block of Wilson Boulevard in Arlington County, Virginia?

A. Yes, I did.

page 834 } Q. Directing your attention to on or about the 25th day of August, 1967, did you have occasion to be on the roof at that address at that time?

A. No, sir, I did not.

John Wright

Q. With relationship to that date, were you on the roof at any time prior thereto?

A. Yes, sir, I was on that roof around the 15th of July.

Q. The 15th of July?

A. Yes, sir.

Q. Did you do some repair work on that roof?

A. I was on the canopy in front of the Goodwill Industry Store there.

Q. In July?

A. In July. Yes, sir.

Q. Were you on that roof at any time from the 15th of July until the 25th day of August?

A. No, sir.

Q. Did anybody work with you on that roof?

A. There was a boy with me, but I was the only one that went on the roof.

Q. You were the only one that went on the roof?

A. Yes.

page 835 } Q. Now, what company were you working for at that time, sir?

A. For myself.

Q. Did there come a time when you had occasion to send workmen to that address between the 15th of July and August 25th?

A. No, sir.

Q. Thank you.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, you said that you were on the canopy?

A. Yes, sir, that is the overhang over the front of the store.

Q. Now, I show you Commonwealth's Exhibit No. 7-A which purports to be a picture of that shopping center. Do you recognize that?

A. Yes, sir.

Q. Now, hold the picture up so the jury can see it. Show the jury what section you are talking about.

A. I was on this lower section down here, right down in this section right down here (indicating). If you had a scene underneath, you would find out that the plaster in this ceiling here underneath this canopy (indicating)

John Wright

page 836 } is torn where a jolson joint was loose, and that was what I was checking.

Q. You did not go back up over this lip here on the main roof itself?

A. No, sir, I was only on this canopy roof here, right down at this lower end (indicating). I sat my ladder up from the end here (indicating), and I went up here (indicating), and I checked the drainage that goes down under the roof and come to find out whether it was leaking around the joint or whether the joint itself was leaking, and then I come down and worked underneath of it and found out that the joint was broke.

Q. What did you do?

A. All I done was put some cement around it and taped the joint.

Q. What kind of cement?

A. Roofing cement. But I didn't put any roofing cement on top of that. It was all underneath.

Q. All underneath the roof?

A. Yes, sir.

Q. Now, you said you had a helper with you?

A. Yes, sir.

Q. You said he didn't go up there at all?

page 837 } A. No, sir he did not.

Q. That was on the 15th day of July?

A. I believe it was the 15th of July, sir. I couldn't say for sure. I could find out through the Better Homes Realty. Mr. Conway, he gave me a check on that day, and he should have the cancellation of that check back by now.

Q. That would be a Saturday?

A. I don't know whether it was a Saturday or not. I couldn't say for sure. I don't know.

Q. But you do know for sure since that date you were not up there again?

A. No, sir, I was not up there again since that date. In fact, I was up there the one time and the one time only.

Q. Did you see anybody else up there when you were working up there?

A. No, sir, there was nobody up there when I was working up there.

Q. Do you know if there were any apple trees that hang over that roof?

A. I didn't pay that much attention.

John Wright

Mr. Hassan: I would like the jury to be excused while I ask a couple of other questions.

The Court: Let the jury retire.

page 838 } (Out of the presence of the jury.)

VOIR DIRE EXAMINATION

By Mr. Hassan:

Q. Mr. Wright, were you in my office earlier this week when you responded here in connection with a subpoena?

A. No one ever subpoenaed me.

Q. Did you arrive in my office earlier this week?

A. Yes, sir, I did.

Q. At that time, didn't you say that you and your helper were there at 10:30 a.m. on the 25th of August?

A. No, sir, I did not.

Mr. Harrigan: Now, I object, Your Honor. He is trying to impeach his own witness.

Mr. Hassan: I am not trying to impeach him, Your Honor. I'm just trying to get something under oath for a little prosecution.

The Court: Mr. Hassan, do you take the position that the witness has turned hostile to you?

Mr. Hassan: I do, Your Honor.

The Court: You may use cross examining methods, if that is so.

Mr. Hassan: I don't care to cross examine him. I'm going to produce the witnesses as to what he said.

page 839 } The Witness: Mr. Hassan, I didn't make any statement in your office about this case at all. I was told to come back.

Mr. Hassan: I asked you if you were on that roof on that day or the day before, and you responded, "On the 25th at 10:30."

The Witness: You did not ask me a thing, except you told me you would not need me that day, to call Detective Wright.

Mr. Harrigan: Your Honor, I think the witness ought to be advised that he has the right to counsel if there is some innuendo if he was on the roof at 10:30, just a very short time before this took place.

John Wright

The Court: The question is apparently moot, because the witness denies ever having made the statement.

Mr. Hassan isn't testifying, and he didn't prove that he did make the statement. So far as this case is concerned, there is no evidence to that effect.

Are you through with the witness?

Mr. Morris: One moment, please, Your Honor.

Mr. Harrigan: Could we have about a three-minute recess in view of what has developed, Your Honor?

The Court: The court will recess for five minutes.

page 840 } (Whereupon, a short recess was taken.)

The Court: Mr. Hassan, have you any further questions of this witness?

Mr. Hassan: Not at this time, Your Honor, not in this proceeding.

The Court: Mr. Harrigan?

Mr. Harrigan: We may have occasion to call this witness again. I wish the Court would recognize him and let us have his phone number and have his subject to call.

The Witness: I'd like to make one more statement. If you people would like to know where—

Mr. Harrigan: I object to his statement. Nobody is asking him any questions at this time, Your Honor. I am merely asking that he be subject to court call.

The Court: State your home phone where you can be reached at night.

The Witness: 549-0631.

Mr. Harrigan: Is that your home?

The Witness: Yes, sir.

Mr. Harrigan: What is your office or work phone?

The Witness: That is it. I work out of my home.

Mr. Harrigan: That is 181 Williams Street in Alexandria, Virginia?

page 841 } **The Witness:** That is right.

The Court: All right. You are excused on call. You may be contacted by one or the other attorneys in connection with this case to come back here, and you are recognized to appear if they do so call you. Unless you hear from them, you are free to go at this time.

Mr. Harrigan: We would like the witness instructed not to talk to other witnesses. I understand he could talk to attor-

Russell L. Moehler

neys, namely Mr. Hassan or us, but as to other witnesses that are going to testify in this case, I wish he would be instructed not to talk to other witnesses about his testimony, namely detectives.

Mr. Hassan: There are a lot of detectives who are not witnesses.

The Court: If you intend to call him as a witness—

Mr. Harrigan: We intend to call him, Your Honor.

The Court: All right.

I will instruct you then not to discuss this case with anyone except the Commonwealth's attorney and his assistants or the defense attorneys in this case, and you do not have to talk to them. But if you wish to, you may, but don't talk to anyone else about this case.

Mr. Hassan: I wish you would tell him not
page 842 } to talk to any of my assistants, either. They
don't know anything about this case, and they
are not in this case.

The Court: All right. Then it's restricted to Mr. Hassan himself and the defense counsel.

The Witness: Yes, sir.

The Court: All right. You are excused.

(Witness excused.)

Mr. Hassan: *Sergeant* Moehler?

The Court: Call the jury.

(In the presence of the jury.)

Whereupon, RUSSELL L. MOEHLER was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. *Sergeant* Russell L. Moehler, Arlington Police Department.

Q. Directing your attention to the 25th day of August, 1967, did there come a time when you had a tour of duty?

Russell L. Moehler

A. Yes, sir.

page 843 } Q. What tour was that?

A. Seven to three.

Q. What was your designation in regard to your assignment?

A. I was police sergeant supervisor on duty that particular day.

Q. Is that 76?

A. 76. Yes, sir.

Q. Now, did there come a time when you were in the vicinity of Harrison Street and Washington Boulevard?

A. Yes, sir.

Q. What time of the day or night was that?

A. Approximately 12:15 p.m.

Q. What was your occasion for being in that vicinity?

A. We had received a lookout for a person that had run from one of our cruisers at Washington Boulevard and Inglewood Street.

Q. Where were you at that time?

A. I was at 11th Road and Jefferson Street, North.

Q. What did you do then, if anything?

A. I proceeded east on 11th Road to Illinois Street, made a left turn northbound to Washington Boulevard where I stopped for the sign. At that time, I observed
page 844 } the subject answering a description that we had received walking east on Washington Boulevard.

I made my right turn on Washington Boulevard heading east, went to Harrison Street. At this time I advised the dispatcher that I had observed a subject answering the description eastbound on Washington Boulevard, and I made my right turn onto Harrison Street, stopped at this time the subject at the bus stop at this particular point.

I stopped my car and had gotten out, and at this time Detective Davis had arrived on the scene.

Q. Now, you say this was a bus stop?

A. That's right, sir.

Q. When you got out of your car, what did you take with you, if anything?

A. My shotgun. I got that prior to getting out of the vehicle.

Q. By the way, what kind of a vehicle were you driving?

A. A '67 Ford.

Q. Is that a marked or an unmarked vehicle?

Russell L. Moehler

A. A marked vehicle.

Q. How far were you from the subject at the time you got out of your car?

page 845 } A. Approximately fifteen feet.

Q. What did you do when you got out of the car?

A. I got out of my car and walked over to the subject and Detective Davis.

Q. What did you do then, if anything?

A. I remained in a position approximately three to five feet from the two people.

Q. Now, did there come a time when anyone else arrived at the scene?

A. Detective Faulconer arrived almost immediately after I got to the scene, and he also approached the scene.

Q. Will you tell the Court what you observed at the scene?

A. At the scene after Detective Faulconer arrived, I immediately took my shotgun back and re-racked it. I returned, and at this time Detective Faulconer was placing handcuffs on the gentleman at the scene. Detective Davis left him and approached Inspector Cole who had arrived on the scene. At this time, I also went in that direction, but I turned away and then went back to where Detective Faulconer was.

Q. Now, will you describe the subject at that time as to his appearance?

A. He had a white towel around his neck, a
page 846 } yellow shirt and dark pants and canvas shoes.

The pants were wet approximately a foot and a half from his shoes tops, above his shoe tops. The towel appeared to be wet; the back of his shirt also appeared to be wet, and the front of his skirt appeared to be wet.

Q. Now, did there come a time when you observed a bus?

A. No, sir.

Q. Did there come a time when anyone else arrived at this scene?

A. Sergeant Ray Cornett, I believe, arrived as I was leaving.

Q. When you left there, where did you go?

A. I went immediately back to the scene of the crime.

Q. I have no further questions.

Russell L. Moehler

CROSS EXAMINATION

By Mr. Harrigan:

Q. What time did you arrive at Washington Boulevard and North Harrison Street?

A. Approximately 12:15, 12:20.

Q. Are you guessing?

A. Yes, sir.

Q. Could it have been later than that?

page 847 } A. Possibly.

Q. How did you arrive at that estimate?

A. It was—it's just a guess, really.

Q. I see. Now, there are tapes that you could listen to so you could have got the exact time, aren't there?

A. Yes.

Q. You didn't bother to listen to those?

A. No, sir.

Q. Isn't that important?

A. Yes.

Mr. Hassan: I'm going to object to that. It is argumentative.

The Court: Sustained.

By Mr. Harrigan:

Q. Now, could you have arrived there shortly after 12:28?

A. Possibly.

Q. All right.

A. Like I say, it is a guess, sir.

Q. Now, you were driving a marked police car?

A. That's correct. Car 11. There's a red light on top and a siren on the fender.

Q. Now you say that there was a sign for a
page 848 } bus stop right there?

A. That's right, sir.

Q. Was the defendant right in the vicinity of that bus stop?

A. He was standing right next to the bus sign, sir.

Q. Facing which way?

A. Facing out to Washington Boulevard.

Q. When you say standing, I take it he was standing still?

A. That's correct, sir.

Q. You said the towel was wet?

Russell L. Moehler

- A. I said it appeared to be wet.
Q. So you didn't feel it?
A. No, sir, I didn't.
Q. Now, you say appeared to be wet. Are you saying it was soaking wet or was it damp?
A. It appeared to be soaking wet.
Q. It appeared to be?
A. That's correct, sir.
Q. How about his face? Was his face dry?
A. I don't recall, sir.
Q. How close did you get?
A. How close did I get to the defendant?
page 849 } Q. At least three to five feet?
A. At least three to five feet. Yes, sir.
Q. But you didn't notice any *perspiration*, real heavy, on his face?
A. There was no heavy *perspiration* on his face. No.
Q. You were there before Faulconer, weren't you?
A. We arrived—yes, I was there before Faulconer.
Q. That is Detective Faulconer?
A. Detective Faulconer, yes.
Q. Did you tell John what you were stopping him for?
A. No, sir, I had no conversation with Mr. Patler.
Q. Did you hear Detective Davis tell him what he was being stopped for?
A. I had no conversation whatsoever.

The Court: That wasn't the question. Did you hear Detective Davis say—

The Witness: No, sir.

By Mr. Harrigan:

- Q. In other words, they did not tell him what they were stopping him for. Is that right?
A. They may have.
Q. You didn't hear it?
A. No, sir.
page 850 } Q. Were you there when John was searched?
A. I don't recall a search.
Q. You don't?
A. I was in the area when he was searched, but I don't recall the search myself, sir.

Ernest R. Davis

Q. Were his hands ever on the car, leaning up against the car?

A. Not that I recall.

Q. You don't recall that, either?

A. No, sir.

Q. No further questions.

The Court: Any further questions, Mr. Hassan?

Mr. Hassan: No further questions.

The Court: All right, Sergeant. You are excused.

(Witness excused)

Mr. Hassan: Detective Davis, please.

Whereupon, ERNEST R. DAVIS was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir, and your occupation.

A. Ernest R. Davis, detective, Arlington
page 851 } County Police Department.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when you had occasion to see this defendant?

A. Yes, sir.

Q. Where and when was that?

A. It was at Washington Boulevard and North Harrison Street, about 12:25 to 12:30 p.m.

Q. What was your occasion for seeing this defendant at that time?

A. I had received a lookout and description over the police radio.

Q. How did you happen to be in that area?

A. From previous description and lookouts, I went to the area to look for the suspect.

Q. Where was the suspect when you first saw him?

A. Standing at the bus stop at Washington Boulevard and Harrison.

Q. When you saw him, what did you do, if anything?

Ernest R. Davis

A. I stopped *by* car, got out, walked up to him, identified myself as a police officer.

Q. What did you tell him, if anything?
page 852 } A. I asked him for some identification. He stated he didn't have anything. I asked him his name. He didn't give it.

Q. Did any other police officers arrive at this time?

A. Sergeant Moehler approached the subject about the same time I did.

Q. Anyone else?

A. Within a few minutes later, yes, sir.

Q. Who was that?

A. Inspector Cole, Detective Payne, Officer Herring and Detective Faulconer.

Q. What did you do, if anything, after you had asked for identification and his name?

A. I asked him to put his hands on the hood of the car. Sergeant Moehler stayed with him. I went back to my cruiser and called for Inspector Cole.

Q. What did you do then?

A. Inspector Cole showed up. He stated it was the same man that he had seen previously.

Mr. Harrigan: Objection, hearsay. I move it be stricken.

The Court: Sustained. The jury will disregard the remark attributed to Inspector Cole.

page 853 } Mr. Hassan: If Your Honor please, I would like to have an exception to that ruling. Inspector Cole testified yesterday to that very fact.

The Court: I don't remember. I remember Inspector Cole identifying the man by name, but I don't remember him saying that it tied in with his previous description.

Mr. Hassan: Inspector Cole walked up and with his back to him, and said that is the same man, and the man walked up and said it was John Patler.

The Court: I don't recall him saying that was the same man, but the jury's recollection will cover the point of this. The jury's recollection will have to stand for that point, not what someone attributes to him.

Mr. Hassan: If Your Honor please, I would like to have an exception to that ruling. I think this detective is entitled to testify to what he heard in the presence of the defendant.

The Court: Go ahead.

Ernest R. Davis

By Mr. Hassan:

Q. Then did there come a time when you ascertained the suspect's name?

A. Yes, sir.

Q. How did you ascertain that?

page 854 } A. From Inspector Cole.

Q. Was this in the presence of the defendant?

A. Yes, sir.

Q. Now, then, what did you do, if anything?

A. He was then placed in my cruiser.

Q. Tell us what you did.

A. We proceeded back to the scene. When we arrived at the scene—

Mr. Harrigan: May we approach the bench, Your Honor?

* * *

Conf.

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page 3 }

* * *

Mr. Harrigan: I anticipate, at this time, that he is going to say something to the effect, Patler said, "Am I supposed to have done that." We would object to him testifying as to that statement without a foundation that he advised him of any rights and so forth. I think his testimony has already indicated that he was not advised of any rights until he was taken down to the police station sometime after he left the scene.

The Court: Now, Mr. Hassan, if that is, indeed, the tender of the evidence that is to come in, you probably have some authorities on spontaneous utterances and I would be glad to hear them, but if it is that, I think it should be out of the presence of the jury.

Mr. Hassan: Providing this isn't a fishing expedition and a discovery attempt of the entire testimony. If this is, I am going to object to it. We have been through a preliminary hearing and this is just a *rehearsal* of all of the testimony.

Mr. Morris: I agree with Mr. Hassan that this is no fish-

Ernest R. Davis

ing expedition in the presence of the jury. He is
Conf. right in that respect.
11/28/67 Mr. Hassan: You have seen him. Is it a fishing
page 4 } expedition or not?

* * * * *

The Court: Let the jury retire.

(Out of the presence of the jury)

VOIR DIRE EXAMINATION

By Mr. Hassan:

Q. Detective Davis, as you approached the scene, did John Patler say anything?

A. No, sir.

Q. Did there come a time before you left the area of the scene and headed for the Violations Bureau that John Patler said anything?

A. Before I left the scene?

Q. As you approached the scene, turned
page 855 } around and headed back, did he make any comment in that area?

A. Yes, sir.

Q. What did he say?

A. He said, "Am I supposed to have done that?"

Q. Did he say anything else?

A. No, sir.

By Mr. Harrigan:

Q. Now, when you left North Harrison Street and Washington Boulevard, you turned off your car radio, didn't you?

A. Yes, sir.

Q. Did you advise Mr. Patler what he was being arrested for?

A. No, sir.

Q. All right, and you drove him back to the shopping center?

A. Yes, sir.

Q. Did you get to the shopping center?

A. Yes, sir, on the street.

Q. Right parallel to where Rockwell was shot or fairly close thereto?

Ernest R. Davis

A. On the street. Yes, sir, to the shopping center.

Q. Were all the police cars still there?

page 856 }

A. There were several cars there.

Q. All right. Now, you obviously hadn't advised him of any rights at all up to that point, had you?

A. No, sir.

Q. And he never was advised of any rights until he got to the Violations Bureau sometime later, is that right?

A. Yes, sir.

Q. Now, on that point, Your Honor, we would object on two grounds. The first ground would be—

The Court: Before you make your objections, I have some questions for him.

Mr. Harrigan: All right.

The Court: Detective Davis, what prompted this explanation or question by Mr. Patler? Was it something that someone said or something that he saw or something he heard on the radio or what? Do you know?

The Witness: I don't know. I didn't say anything to him.

The Court: Did it just come out of the blue, without any prompting remark, as far as you know?

The Witness: I didn't say a word to him. No, sir.

The Court: Where was your car when he said it?

The Witness: We were turning the corner from
page 857 } Wilson Boulevard into the street that the 7-11 is
on at the end of the shopping center.

The Court: Did he make the remark then when the scene of the shooting was in his view?

The Witness: Well, I couldn't say whether it was in his view or not, Your Honor. I was driving the car and he was in the back.

The Court: Was it in your view at that time when he made this remark?

The Witness: Well, the scene was, the car and some people.

The Court: Was Roekwell's body in your view at that time?

The Witness: Not in my view.

The Court: What was between you and the body?

The Witness: Several cars, people

The Court: Was there a crowd of any size there?

The Witness: Well, I don't know about a crowd. There were people there. Yes, sir.

The Court: Were there parked police cars there?

Ernest R. Davis

The Witness: Yes, sir.

The Court: Would they have been in his view as far as you can tell?

page 858 } The Witness: I couldn't tell. No, sir.

The Court: Who else was in the car with you?

The Witness: Detective Faulconer.

The Court: Had Faulconer said anything that prompted this remark on Mr. Patler's part?

The Witness: Not to my knowledge.

The Court: And you had not?

The Witness: No, sir.

The Court: Had anything come over the radio which would have promoted it?

The Witness: Well, it is hard to say. So much was coming over before I turned it off. I just don't remember what came over it.

The Court: When did you turn it off? Starting from the time that you put Patler in your car.

The Witness: Shortly after I turned onto North Harrison Street from Washington Boulevard.

The Court: Therefore, how long would he have been listening to the radio? Just a rough estimate of minutes.

The Witness: Well, I wouldn't say it would be more than a minute or so, a minute or two, at the most.

The Court: During that minute that the radio was broadcasting, can you recall whether any specific mention of the Rockwell shooting came over the radio?

The Witness: I can't recall that. No, sir.

The Court: Did you or did anyone else in your hearing say anything to Patler about the Rockwell shooting prior to the time that he made this remark?

The Witness: Not to my knowledge.

The Court: You did not hear anyone say anything to him about the Rockwell shooting prior to his making this remark?

The Witness: No, sir.

The Court: Was he ever out of your presence from the time of your arrival at the scene where he was apprehended up until he made the remark?

The Witness: No, sir.

Mr. Hassan: I think I can get that answer out of him be-

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cause I know what you are trying to get, but you are not asking him the right questions.

The Court: Go ahead.

By Mr. Hassan:

Q. Did he hear two police officers come and tell you to do something when you arrived at the scene?

A. I don't know if he heard it or not. He was in the car.

Q. He was in the car?

page 860 } A. Yes.

Q. What did they tell you?

A. They told me to turn around and come back to the Violation Bureau.

Q. And do what?

A. Have him advised of his rights.

Q. Was that before he made that remark or after it?

A. After it.

Q. After he made the remark?

A. No, no, before we turned—after we turned around, after going up the street from the shopping center. Two police officers came out, flagged me down, told me to bring him to the Violation Bureau and have him advised of his rights. I went another few feet, turned to the street in front of the 7-11 and then he made the statement, and I proceeded to the station.

The Court: All right.

Do you gentlemen wish to bring out any further facts about this?

Mr. Harrigan: Yes, Your Honor.

By Mr. Harrigan:

Q. As a matter of fact, you were parked right
page 861 } beside the body almost when the two policemen
came up, weren't you?

A. No, sir.

Q. Did you ever park beside the body?

A. We didn't park.

Q. You had to stop.

A. We stopped.

Q. Now, when you stopped—

A. That was on the street. That wasn't in the shopping center itself.

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Q. Was it right opposite the shopping center?

A. I didn't see the body.

Q. Was it right opposite where the body was lying?

A. I couldn't say that if I didn't see it.

Q. Did you know from where the body was lying?

A. No, sir, I never was at the scene until then.

Q. I will show you a picture of where it was lying. Here is one that is 7-A.

Mr. Hassan: Don't get the three of those mixed up, because two of these haven't been introduced yet.

By Mr. Harrigan:

Q. Looking at that picture, which way did you come in? The same direction that picture is looking?

A. No, sir, I was going west on Wilson Boulevard. I'm not sure, but I think this is looking east.

Mr. Hassan: Let me see it. Yes, that is definitely looking east. Goodwill is down at that end (indicating).

By Mr. Harrigan:

Q. Now, where did you turn around?

A. At 9th, the next street at the end of the shopping center where the 7-11 is. We went around the block. I didn't turn around; I went around the block. 7-11 is up here on the corner. I came west on Wilson Boulevard and made a right turn on the street in front of the 7-11 store and went around the block and back out, just completely around the block back out the street next to the Goodwill and back down to Wilson Boulevard.

Q. If you came around off Wilson toward the corner of the 7-11 store, right?

A. Yes, sir.

Q. You would be going in the same view as this picture is, wouldn't you?

A. Yes, sir.

Q. All right.

Mr. Hassan: He wouldn't have the same view. That is a view facing east. He wouldn't have the same view as the camera because the camera is facing the opposite

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page 863 } direction. It would be facing toward where he
was approaching, but not the same view. Be-
sides that it wasn't taken at the same time.

By Mr. Harrigan:

Q. Now, where did you stop and talk to those two police officers in that picture there?

A. It doesn't show Wilson Boulevard, I don't believe.

Q. Wilson Boulevard is right out here (indicating), isn't it?

A. Yes, sir.

Q. Now, where did you stop in relation to these stores? In front of which store?

A. I couldn't say.

Q. You don't know?

A. No, sir.

Q. It was after you came into this vicinity and after you talked to the two police officers and started out again that he made this statement to you?

A. Yes, sir.

Q. I don't have any other questions.

The Court: Detective Davis, did you go on past the shopping center and then turn back?

The Witness: No, sir, I went around the block. I made the right turn and went completely around the block
page 864 } and went back out this street here (indicating)
at the end of the shopping center and back down
Wilson Boulevard.

The Court: So you went around behind the shopping center, is that right?

The Witness: Yes, sir.

The Court: Where were you in the course of that trip around when this remark was made?

The Witness: The best I can remember, after we made the turn onto the other street.

The Court: Does that mean after you have gone around the block and after you have made the first right turn?

The Witness: Yes, sir.

The Court: In the course of that trip, would you not have passed just to the west of the shopping center so you would have a view to the east down through?

The Witness: Yes, sir.

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The Court: Just the way this camera is looking. So wouldn't it have been possible that he would have seen that body lying there before he made this remark?

The Witness: I imagine so.

The Court: Well, had anyone to your knowledge said anything to him about a shooting, a killing, a homicide, a murder or any words to that effect, or had anyone said page 865 } anything to him about Rockwell prior to the time he made this remark?

The Witness: Not to my knowledge. No, sir.

The Court: Do you gentlemen have any further questions?

I will hear your argument, if you don't. Mr. Harrigan?

Mr. Harrigan: We have two grounds. One, they didn't advise him of anything. And the second ground, perhaps the one that this falls right in, is there is only one theory that it could come in under. Any utterance doesn't come in just because it is an utterance. It would come in perhaps under an applied admission of some sort. Aside from the fact that we feel it shouldn't come in at all because he wasn't advised, it is questionable whether it was an incriminatory statement. It was a question, "Am I supposed to have done that?" Now, at the very best, it is not an incriminating statement, therefore, it has no probative value since it is obvious from the testimony that he had seen the scene and presumably with the body and many police officers and a great crowd around and so forth. He is under arrest with handcuffs in the car behind his back, and he drives by the scene.

Faulconer hasn't testified. We don't know page 866 } whether he asked him something or not. To say, "Am I supposed to have done that?" Certainly it is not an incriminatory statement and since it does not fall within that category, it has very little, if any, probative value. It is a hearsay declaration, so we move that it not be admitted because it is merely a hearsay declaration and for that reason alone and other reasons as stated.

The Court: Mr. Harrigan, would a statement by the defendant himself at the scene not be admissible for the jury to weigh whether or not it was incriminating in the absence of the recent Supreme Court decisions concerning the rights to counsel? If it were not for this question of a right to counsel, would not any utterance that he made be admissible as a verbal act and whether it is an admission which is to be used against him or not, be a question for the jury?

Ernest R. Davis

But as far as its admissibility is concerned, would not under a former law any statement he made at the scene have been admissible?

Mr. Harrigan: No, Your Honor, I don't think it would be. I think it would have to be a statement which would be some sort of an admission on his part. Admissions and declarations against interest are an exception to the hearsay rule.

page 867 } The Court: Yes, but on the question of whether they are really against interest or not, doesn't the jury have to decide that? Does the Court have to decide that on admissibility? Mind you, I understand if the shoe were on the other foot, if the defense were seeking to bring out a statement and it were self-serving, it could, but if the Commonwealth is trying to bring out a statement, and there is some question of whether it is self-serving or damaging, isn't it admissible and for the jury to decide whether or not it is self-serving or damaging?

Mr. Harrigan: No, that any declaration, be it by the defendant or other parties, are hearsay statements, they don't have the sanctity of the oath and so forth. But there are certain exceptions when certain statements come in, and if it was always for the jury whether for it to decide whether it was an admission and fall within the hearsay rule or a declaration against interest and fall within the hearsay rule, then every statement would come in and there would be no reason to keep any of them out, because it is a question of weight. I think it is up to the Court to decide whether, in fact, it is a statement of admission or of interest. Then if it is then, the jury decides whether it's incriminating or not, but certainly the Court should decide whether it is
page 868 } an exception to the hearsay rule.

My position is that a man asking a question, "Am I supposed to have done that?" falls within the category of admission or a declaration against interest. It is merely a statement of a question which is not an admission of anything. It is an inquiry, that is what it is.

The Court: You also take the position that he was entitled to be advised of his constitutional rights? You are also relying on that?

Mr. Harrigan: Absolutely, Your Honor. The question is, he was arrested and they didn't even tell him what he was arrested for, but the radio was on so he could have heard

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what was going on. I think it is obvious that the only thing being broadcast over the radio was that particular incident at that time and what he heard on the radio, I don't know, but I think he had an absolute right to be advised of his rights and what he was being charged with. For that reason alone, I think it should be stricken.

The Court: Mr. Hassan?

Mr. Hassan: This business of advice of counsel is a matter of reasonableness in time, and I think when we get to that testimony, we will find that this is a reasonable time. With statements that are spontaneous, conscience con-
page 869 } fessions are all admissible without advice of counsel.

The man who stands in his door and welcomes the police officer and says, "I killed my wife," or the man who is apprehended and goes by the scene and says, "Am I supposed to have done that?" those statements are all equally admissible. The weight of them is for the jury. Then after he's been given the advice, there isn't any requirement of counsel if he decided to talk once he's been advised of his rights.

So there is a long series of categories, and it isn't up to the Commonwealth to say that we are going to tie this statement in time and time again. Right now, we don't have to tie this up. This is a spontaneous statement. This is one that he made when he went by the scene, when nobody knows what he saw except him. I think at this time this statement should go in. I don't see anything to keep it out. It specifically states in the whole series of cases that spontaneous utterances, conscience confessions are admissible without advice of counsel. This statement would have been admissible under the Virginia law right along without those rulings, and it still is admissible.

The Court: I am inclined to agree with you that it would have been admissible under Virginia law, but in this situation it seems to me that it's got to stay out be-
page 870 } cause of the fact that, and I want to make it very clear I am not accusing the police of doing this—in fact, I am quite sure from the testimony that they did nothing improper at this point, but if it is permitted to come in, it opens up the area to this kind of thing. The police arrest a man and do not tell him why he was arrested; they handcuff him; they remain as silent as sphinxes; they drive him past the scene of some appalling crime and let him look

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at a bleeding body on the ground, and then they just stand there looking at him silently; they don't advise him of a right to counsel and wait for him to keep silent; they wait for him to say something, "Am I supposed to have done that?" which anybody might have asked, if frightened and perfectly innocent, falsely accused or not accused, somebody is taken by the police, handcuffed and held over a body is likely to say, "Am I supposed to have done something to do with this?" And then they come to court and seek to prove that against him as an admission.

I realize the police didn't do that in this case—

Mr. Hassan: You don't even know whether the body was covered with a sheet at the time he went by. I don't know where you get the illustration of standing over a bleeding body. There's isn't a scintilla of evidence to say
page 871 } that was done.

The Court: You have had your say. I am now having mine.

The view in this photograph indicates that the defendant would have already been brought past this scene so that he would have had the same view and makes it clear that the defendant was led past the scene of the crime where the body was visible. Now, the detective was busy driving the car and didn't look and didn't see it. But the inference is that the defendant could have seen it, because here is a picture showing exactly the scene he was led past.

Mr. Hassan: No, it is not, Your Honor. I want to correct the Court. I don't want the Court to put on record these statements because there are pictures coming in here that are going to show you an ambulance, an identification police car or a loaded police car and a mob of people. I don't think anybody walking by could have seen that car without going inside riding by could have seen what you think he could have seen from that picture. The pictures have not yet gone in that were taken about the same time he went by. You haven't seen that scene. I haven't reached that point in my case. I think that you are prematurely judging what this is
page 872 } on the basis of what is in, and I am a long way from showing you that scene. That is the next of this case. You haven't seen that yet.

The Court: I will complete what I was going to say and then come back to that.

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On the basis of what is before me, it appears that he would have seen what is shown in photograph 7-A. If that is so, it falls within the category of cases upon which I draw an extreme example. A rule that would permit a statement made by a defendant out of the presence of counsel, not advised of his rights, to be used against him upon being exhibited such a scene is a bad rule, and to my mind clearly violates the spirit, if not the letter, of the Miranda case. Now, I don't think that is exactly what was done in this case, but the line is too fine a one for the Court to draw, so I am going to exclude this and to sustain the objection.

Now, if to come to your more recent point, the burden it seems to me of going forth with evidence now shifts to the Commonwealth as to this matter. There has been no showing by the Commonwealth that this statement was really made in a spontaneous way without having been shown the scene of a body lying there and a big crowd around it with police cars and so forth. That is what is presented to page 873 } me in this case.

If the Commonwealth, later in the case, can go forth with evidence to show that that was not what was displayed to him, I will reconsider this matter, but I have got to be shown that the defendant was not shown a scene of a murder before making this remark. I wouldn't have any question about this if the defendant has just popped off with this out of the clear blue sky, but it seems to me that he was put in a position which would have elicited a remark from a perfectly innocent person. Under those circumstances, he was entitled to advice of counsel.

If the Commonwealth later in its case can show me that is not the fact, I will reconsider this matter, but for the time being, the objection is sustained.

Mr. Hassan: May we have a recess, Your Honor?

The Court: Yes, sir. Is it all right with you if Detective Davis leaves the stand?

Mr. Morris: Yes, as long as he doesn't discuss the case.

(Whereupon, a short recess was taken.)

The Court: Would you call the jury?

(In the presence of the jury.)

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Whereupon, ERNEST R. DAVIS resumed the
page 874 } stand, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. I think when we left off, you had left Harrison Street and Washington Boulevard and turned your radio off. Where did you proceed from there?

A. Back to the scene.

Q. Did there come a time when you were advised to change your course?

A. Yes, sir.

Q. What were you told?

A. I was told to bring the subject to the Violations Bureau to have him advised of his rights.

Q. Then what did you do, if anything?

A. I turned around and proceeded to the station.

Q. Tell us what you did from the time you turned around.

A. I just went around the block and headed for the station.

Q. You arrived at the station, I presume?

A. Yes, sir.

Q. Tell us.

page 875 } A. We took the subject in, and on the way in, I stopped and asked the man on the desk if the Violations Bureau was closed. He in turn told me yes, so Detective Faulconer and I took the subject up to the Detectives Bureau and put him in the interview room on the left side.

Q. Then did there come a time when you took him to the Violations Bureau?

A. Yes, sir.

Q. What occurred there?

A. He was advised of his constitutional rights by Special Justice Gannon.

Q. Describe what occurred.

A. Special Justice Gannon advised the subject of his rights and in the presence of myself and Sergeant Pever, Detective Snooks and Detective Faulconer, the subject was given a form to sign, saying that he had been advised of his

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rights, and he refused to sign this form. Also at the Violations Bureau, he made a phone call to his wife.

Q. Was a recording made of this?

A. Yes sir, a recording was made. A recording was taken along with the form, and we came back to the Detectives Bureau.

Q. Do you have that form and recording in your possession?

page 876 } A. Yes, sir.

Q. Would you ask for property number 23887, please?

When you received this, did you mark it in any way?

A. Yes, sir.

Q. Would you open it and take a look at it and answering yes or no, tell me if those are the documents which you are referring to?

A. Yes, sir.

Q. If Your Honor please, I would like to have this envelope marked, because I don't have a white pencil to mark this as Commonwealth's Exhibit 11-A and B.

The Court: 11-A and B.

(The documents referred to were marked Commonwealth's Exhibits 11-A and 11-B for identification.)

Mr. Hassan: A being the typewritten and executed advice and B being the tape of the advice by the special justice.

If Your Honor please, I would like to offer 11-A in evidence.

The Court: Is there an objection?

Mr. Harrigan: I would like to ask a couple
page 877 } of questions.

The Court: All right, sir.

Mr. Harrigan: Are you going to offer B, too?

Mr. Hassan: I am going to offer B and the only way I can offer B is to play it, and I will have Sergeant Snooks bring the equipment in to play it. I offer B.

The Court: Is there anything on the tape besides the advice as to the constitutional rights?

Mr. Hassan: It is the recording in the voice of the special justice which I haven't heard reading this form and asking the suspect to sign it, and what else would be on it, I wouldn't know. I have never played it.

Ernest R. Davis

The Court: Detective Davis, you happen to know if this tape contains any statements made by the defendant other than his refusal to sign this form?

The Witness: Not to my knowledge.

Mr. Hassan: It would only contain what was said, if anything, in the Violations Bureau at the time the special justice was advising him of his rights. The special justice controls the recording.

The Court: All right, sir.

Mr. Harrigan, go ahead.

VOIR DIRE EXAMINATION

By Mr. Harrigan:

page 878 { Q. What time was he taken over to the special justice?

A. Shortly after 1:30, after they opened.

Q. Who was with you?

A. Sergeant Pever, Detective Snooks, Detective Faulconer and myself.

Q. Who was the special justice?

A. Gannon.

Q. Did you hear Gannon read that form to him?

A. Yes, sir.

Q. Had you informed him at that time what he was charged with?

A. No, sir.

Q. As late as 1:30 or after he still didn't know what he was being held with, or you hadn't told him?

A. No, sir.

Q. Was he still in handcuffs?

A. I don't remember.

Q. Did he ask for a phone at that time?

A. No, sir.

Q. Did there come a time when he did ask to talk to an attorney?

A. I think when he made the phone call, he asked somebody to call an attorney. He never asked me
page 879 { for a phone.

Q. Did you give him an opportunity to call an attorney?

A. Yes, an opportunity to call anybody he wanted.

Ernest R. Davis

Q. Now, was that opportunity given to him before or after he went to the special justice?

A. Both.

Q. When did he make a phone call, before or after he went to the special justice?

A. After.

Q. Immediately after?

A. While he was there.

Q. While he was there?

A. Yes, sir.

Q. Now, this tape that Mr. Hassan has introduced that purports to be a tape of the special justice reading certain rights that he had?

A. Yes, sir.

Q. Was that tape ever shut off at any time and started again?

A. I don't control the tape; it is done by the special justice. I don't know.

Q. You don't know? Well, you don't know that is the total recording of what transpired?

A. Yes, sir.

page 880 } Q. Have you heard the tape?

A. No, I haven't heard the tape.

Q. Didn't he interrupt when you were reading this and say that he wanted to call his wife or an attorney, and the tape was shut off?

A. I don't remember that. No.

Q. We would like to hear the tape. I don't know what is in it, Your Honor.

The Court: All right. I will hear it first out of the presence of the jury, because there might be something objectionable in it. I just don't know, so I will just hear it first.

Did you have any further questions?

Mr. Harrigan: Not right now, Your Honor.

The Court: Mr. Harrigan, while they're getting that, have you any objection to 11-A which is the rights form?

Mr. Harrigan: Yes, Your Honor, I do.

The Court: What is the basis for the objection?

Mr. Harrigan: The defendant has an absolute right to sign or not to sign any document he wants to. This is being introduced purportedly to show he was being advised of his rights and for some reason or other, refused to sign it. He has an

Ernest R. Davis

absolute right not to sign it, and I think that
page 881 } that plus the tape are merely cumulative at best,
and I don't think unless they plan to introduce
some statement that he made, whether he was advised of his
rights or not, is even a question which we ought to entertain
in front of the jury which we already have.

The Court: The constitutional rights question is absolutely
irrelevant to the case, it seems to me, unless there is some
effort made to introduce a statement—

Mr. Hassan: What type of futile exercise would the Judge
expect me to be engaged in?

The Court: I assume that the Commonwealth has some
purpose in it, and under the decisions of the Supreme Court
it is necessary to go through this before they can seek to
introduce any statement being made. If it turns out to be
irrelevant because no statements made while in custody are
introduced, the jury will be instructed to disregard it en-
tirely as having no probative bearing on the guilt or inno-
cence of the accused. I assume it is a step in a chain that
he's seeking to go through. If not, it just becomes moot, and
I think harmless. Certainly you are entitled to an instruc-
tion under those circumstances. That is, refusal to sign, is
perfectly within his rights, that he didn't have to sign and
they shall not hold it against him if he did not
page 882 } sign.

Mr. Harrigan: There is one other point, too,
which we would like to get into. Presumably, they are going
to introduce some statement later on. Our position on that
would be that he did wish to exercise his right to have an
attorney. Now, in the Miranda case, if you advise somebody
of their rights and at that time he desired an attorney, then
any interrogation thereafter must cease, and he must be
given that opportunity. Our position would be that he did
in fact ask for an attorney.

The Court: I think you are a little premature.

Mr. Harrigan: I know that.

The Court: I will let you get to that in the usual course.

Detective Davis, is that your signature on this form?

The Witness: Yes, sir.

The Court: Is that the form that was, in fact, presented
to Mr. Patler at that time?

The Witness: Yes, sir.

Ernest R. Davis

The Court: All right. The objection is overruled, and I will receive that in evidence.

(The document previously identified as Commonwealth's Exhibit No. 11-A was received in evidence.)

page 883 } Mr. Harrigan: Now, the second point on this form, Your Honor, is that under Virginia Code anything that the defendant says and presumably anything that he does at that special justice's is not admissible in evidence at this trial under the Virginia Code, and his refusal to sign, I think, would be equally a verbal act which would not be admissible in evidence by Virginia statute.

The Court: You are probably right, that this is of no interest to the jury. It has to come in as evidence in order for me to be able to rule on the admissibility of any statement that he later makes, so if you raise that point I won't exhibit it to the jury unless it later becomes material to some question they have before them.

The threshold question that is going to be presented to me is evidently whether or not any statement that he made was made after proper advice as to his right to counsel and his right to keep silent. This is evidence I would have to have to make this determination.

Mr. Harrigan: All right, sir.

Mr. Hassan: I would like to have that citation of the statute.

Mr. Harrigan: 1921, 268 and 267, where it says, "No judge or justice or clerk of any court."

page 884 } That is his voice on the tape. Not only is he testifying, but he is doing it through a hearsay document. He is incompetent and therefore the tape would be incompetent under this provision.

Mr. Hassan: There is no such elastic interpretation of that section, Your Honor. That section prevents him from being summonsed from the witness, and that was the entire intent of the legislature and the entire intent of the Supreme Court of Appeals.

It has never said that what occurred could not be used. In fact, there have been DWI convictions of what occurred there in the presence of the justice.

Mr. Harrigan: If he can't testify, he certainly can't have it put down on the tape and have the tape play it.

Ernest R. Davis

The Court: I will have to hear the tape and find out if he is really testifying. If it is merely introduced for the purpose of showing that the special justice read him his rights, the special justice isn't testifying of that fact. It is merely illustrative and corroborative of Detective Davis' testimony.

This is merely like a photograph of what is page 885 } being done. This is illustrative testimony. Although it seems that your point is probably well taken as to the tape as it is to the form, that it really isn't a problem for the jury, but for the court as to whether any subsequent admissions are admissible.

Mr. Hassan: I think that that video tape recording by advice of counsel and special magistrate are admissible into

The Court: You didn't have any objection, first, to the tape which we are experimenting with. I don't think it will be too long before we show you video tape to the voice of counsel.

The Court: That will be very helpful to the Court, but I don't think it is of any interest to the jury of whether Mr. Patler has been advised of his rights as charged. I will hear the tape if you have got it connected up there.

(Whereupon, the tape recording is played.)

Mr. Hassan: Is there anything else on that tape?

The Witness: It appears that that is the end of it.

The Court: You didn't have any objection, first to the tape being received into evidence by the Court on the issue of whether or not the man was properly advised of his rights?

Mr. Harrigan: I think for the purpose of this page 886 } hearing here, it is already in evidence as a practical matter, so I have no objection to that for this.

The Court: Do you object to the jury hearing it?

Mr. Harrigan: No.

The Court: I didn't think you would. Now, what about this form? Do you still have an objection to the jury seeing that?

Mr. Harrigan: I think the form is merely cumulative of what the tape says.

Mr. Hassan: I don't think it is, Your Honor, and I would like to have the form in evidence, both A and B, as to what I am offering, not one, but both. They are entirely different

Ernest R. Davis

as you well know after having heard the tape. I want them to have both.

The Court: All right, the objection is overruled and I will let the jury have both, but I will give the jury a cautionary instruction concerning the defendant's rights to refuse to sign it and then he is under duty—

Mr. Hassan: At the proper time, Your Honor, I would have no objection.

The Court: That he is under duty to sign it and that there is no implication. I will instruct them now.

Mr. Hassan: I object to the Court giving in-
page 887 } structions throughout the case. I think the in-
structions should come in an orderly fashion at
instruction time.

The Court: I will give it now.

Would you call the jury?

(The document previously identified as Commonwealth's Exhibit No. 11-B was admitted into evidence.)

Mr. Hassan: Before you do that, Your Honor, would you have sworn in James Milroy who is a witness and advise him not to leave without consent of Court. I think he's been here and left before, and there is some question about whether he is going to remain at this time.

The Court: May it be at lunch?

Mr. Hassan: It will have to be at lunch, now.

Mr. Harrigan: Your Honor, as long as this hearing is still in process, I think it ought to be continued. If there is going to be any statement or interrogation after, I think we have a right to know what happens from the time of the swearing in and advising and whether he had called counsel, and if he did, our position would be under the Miranda case that it would not be admissible. You have to have not only advice of counsel, you have to have an intelligent waiver of
page 888 } counsel in order to make this statement, and ac-
cording to the Miranda case if at any time the
man requests counsel, all interrogation must
cease.

The Court: It is perfectly clear to me that the jury would have to be excluded while we do go into that, but what I thought I would do is let them come in, receive these two pieces of evidence, listen to the tape and excuse them for lunch.

James Vernon Milroy

Mr. Harrigan: All right, Your Honor.

The Court: Did you want to call Mr. Milroy at this time?

Mr. Hassan: Yes.

Ask Mr. Milroy to come in and be sworn.

(MR. MILROY IS SWORN.)

The Court: Mr. Milroy, you are recognized as a witness in this case. Your testimony will not be needed until after lunch. I would imagine that it won't be needed until two o'clock or sometime after that, so I will excuse you at this time. You are free to go, but you must be back here at two o'clock. Remain outside the courtroom then until your testimony is called for.

Between now and the time you actually testify, you are not to discuss this case with any person except the Commonwealth Attorney or the defense attorneys, and page 889 } you do not have to discuss it with them unless you wish, but you may talk with them and no one else.

Mr. Morris: May we have your full name?

The Witness: James Vernon Milroy.

Mr. Morris: Where do you live?

The Witness: 181 Williams Street, Alexandria.

The Court: All right, Mr. Milroy, you are excused until two o'clock.

Would you call in the jury?

Let the record show that the form is received in evidence as 11-A; the tape is 11-B.

Ladies and gentlemen, we have admitted into evidence a form about which you heard some testimony and a tape. We will let you examine the form and then listen to the tape recording and then excuse you for lunch.

Ladies and gentlemen of the jury, the Court tells you at this point that the accused had a perfect right to refuse to sign that form, and his refusal to sign that is not to create any implication against him. He was within his rights in refusing to sign, and his refusal to sign does not bear on this case at all and is no evidence against him, nor should it create any inference against him.

Now, would you play the tape?

page 890 } (Whereupon, the following tape was played:)

Ernest R. Davis

"I, Robert Gannon, a Special Justice in the Violations Bureau in Arlington County, Virginia, do on this 25th day of August, 1967, in accordance with the Mandate of the Supreme Court of the United States, advise you of your rights under the Constitution of the United States. You have a right to remain silent. You have a right to consult a lawyer. You have a right to have counsel of your own choosing, or have counsel appointed by the Court. You have a right to have counsel present at any interrogation. If you decide to remain silent, you need not answer any further questions. If you decide to hire counsel, you need not answer any further questions until you consult with counsel. Anything you say may be used for or against you in court. You have a right to discuss this matter with the police if you desire, with or without the advice of counsel."

"Mr. Gannon: "Now, Mr. Patler, do you understand what I have read to you?" Mr. Patler: "I have one question. What am I doing here? Why am I being held? Why was I arrested?"

The Court: Did you all hear and understand the tape? Detective Davis, were you present when what is on that tape took place?

page 891 } The Witness: Yes, sir.

The Court: Does it fully and correctly convey all that was said during the time that it purports to cover?

The Witness: Yes, sir.

The Court: All right. Any further questions?

Mr. Hassan: I have some further questions.

The Court: Not on this point?

Mr. Hassan: It will just be two or three, and it will come up to the next point. It's about three questions.

The Court: Would they be appropriate for the jury?

Mr. Hassan: Yes, they would.

The Court: All right, go ahead.

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Now, did there come a time when the defendant made a phone call after that recording?

A. Yes, sir.

Q. How soon was that?

A. He made it at 1:49, just a matter of minutes.

Ernest R. Davis

Q. What was that phone call for, if you know?

A. To call his wife.

Q. Then what did you do after that? That call was made at the Violations Bureau?

page 892 } A. Yes, sir.

Q. Then what did you do?

A. He was taken back across the street to the Detective Bureau.

Q. Where was he put there?

A. He was put back into the same interview room on the left in the Detective Bureau.

Q. Between that time and roughly two o'clock, was there any further activity with regard to you and the defendant, John Patler?

A. No, sir.

The Court: All right. Do you gentlemen have cross examination of Detective Davis?

Mr. Morris: Yes, Your Honor.

Mr. Hassan: I am not through with Detective Davis. This is up to the point—I have got lots more. This is where Mr. Harrigan indicated he wants a court ruling.

The Court: All right.

Ladies and gentlemen of the jury, we will excuse you at this time for lunch.

(Out of the presence of the jury.)

Gentlemen, I propose to recess for lunch at this time, and we might as well excuse Detective Davis to be
page 893 } back here at 1:30, and we can continue this at that time.

Detective Davis, you are free to go. Don't discuss the case with anyone until 1:30. The court will recess until 1:30.

May I see counsel for a minute?

(Whereupon, the luncheon recess was taken.)

AFTERNOON SESSION

(Discussion outside of the presence of the jury.)

(Whereupon, a short recess was taken.)

Mark Forsyth

The Court: Do you all want to proceed out of the hearing of the jury, now?

Mr. Hassan: No, if there's no objection, rather than resume with Detective Davis at this time, because there will be argument before there is any further testimony of him before the jury, I would like to get out of order this young man, Mark Forsyth, who found one of the casings and let him go, and the two soldiers who used the mine detector and Geiger counter and any other civilian, and then come back to Detective Davis who might be waiting around.

The Court: Do you all have an objection to that?

Mr. Harrigan: The only objection I would have, I believe it is discretionary of the Court, but it does break the continuity of the witness' testimony up, and we have page 894 } not had an opportunity to cross examine on anything he's said. I don't know how much longer he is going to be on.

Mr. Hassan: He is going to be on quite a while. There is quite a bit of evidence to put in by him, and we are going to start into a discussion immediately on statements he made after advice of counsel and other advice of counsel that he has not testified to yet, and when we get through with that, we go into another field which I am sure we are going to have another legal argument on with Davis. He will be a long, long witness, and I prefer to get these other witnesses out of the way.

The Court: All right. In view of the length of time that this trial has kept these witnesses tied up, I will let you go out of order.

Mr. Harrigan: I object, Your Honor. Note my exception.

The Court: All right.

Mr. Hassan: Mark Forsyth.

The Court: Call the jury.

Mr. Morris: Is there going to be a *Voir Dire* on this little witness, Your Honor?

The Court: I will proceed as I did yesterday.

Mr. Harrigan: I object to the proceeding, page 895 } Your Honor. This is strictly a legal question.

Note my exception to the first one on the further ground that it is a hearing that should be held outside of the presence of the jury.

Whereupon, MARK FORSYTH was called as a witness on

Mark Forsyth

behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

A. Mark D. Forsyth, 5938 Wilson Boulevard, Arlington, Virginia.

Q. Are old are you, Mark?

A. Eleven years old.

Q. Were you in the vicinity of the 6000 block of Wilson Boulevard on the 25th day of August, 1967?

A. Yes, sir.

Mr. Harrigan: Objection, Your Honor.

The Court: Now, Mr. Hassan, go ahead and examine him on the question of the oath.

Mr. Hassan: I don't think any of his testimony in view of his age requires any qualification of him. He page 896 } is not an identification witness, and what he did he did himself, and I don't think we have to qualify him.

The Court: I think we better go ahead. You ask him some questions about it.

By Mr. Hassan:

Q. What grade are you in school, Mark?

A. Sixth grade.

Q. Do you understand what was said to you when you raised your right hand and were sworn as a witness?

A. Yes, sir.

Q. What was said to you?

A. That I was supposed to tell the truth.

Q. Do you know what telling the truth is?

A. Yes, sir.

Q. What happens to someone who does not tell the truth?

A. They're punished, usually.

Q. I don't think I need to ask any more questions of this witness, Your Honor.

The Court: Mark, you were given an oath to tell the truth and the whole truth and nothing but the truth. Do you understand what that meant?

Mark Forsyth

The Witness: Yes, sir.

The Court: All right. You are prepared to tell
page 897 } the truth here today?

The Witness: Yes, sir.

The Court: Go ahead.

By Mr. Hassan:

Q. Now, did there come a time in the 6000 block of Wilson
Boulevard when you found something?

A. Yes, sir.

Q. What did you find?

A. I found a shell.

Q. Where did you find that?

A. Underneath the car, underneath Mr. Rockwell's car
after it was towed away.

Q. What did you do with that shell?

A. I gave it to an officer.

Q. Do you know what that officer's name was?

A. I am not sure.

Q. You are not sure?

A. I think it was Detective Kadel. I am not sure.

Mr. Harrigan: I object to this. It is speculation, Your
Honor.

The Court: Overruled.

Mr. Harrigan: Exception.

By Mr. Hassan:

page 898 } Q. Was the officer you gave it to in plain
clothes or in uniform?

A. Plain clothes.

Q. Thank you very much, Mark. I have no further ques-
tions of this witness.

The Court: Cross examination?

Mr. Harrigan: No questions.

The Court: All right.

Mark, you are excused and free to go.

(Witness excused)

Mr. Hassan: Mr. Milroy.

James Milroy

Whereupon, JAMES MILROY was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. James Milroy, 181 Williams Street, Alexandria, Virginia.

Q. What is your occupation, Mr. Milroy?

A. Roofer.

page 899 } Q. Did there come a time on or about the 25th day of August, 1967, when you had occasion to do any roofing work on the stores in the 6000 block of Wilson Boulevard?

A. I did.

Q. What work did you do there, sir?

A. I had an engineer up on the roof. I had some trouble with the jolson joint.

Mr. Morris: Your Honor, we object to this. He said he had an engineer on the roof. The question was, what did he do, not what did somebody else do.

The Court: Overruled.

Mr. Morris: Exception.

By Mr. Hassan:

Q. Go ahead.

A. I had an engineer on the roof to help me out with the situation that I had on that roof for about two months.

Q. Were you on that roof on August 25, 1967?

A. If that is the date that I had in mind, I was.

Q. Why—

A. That was when they had all that trouble up there.

Q. What time were you on that roof?

A. I was on that roof before noon.

Q. Much before noon?

page 900 } A. Well, now, no, it wouldn't be much before noon. It could be an hour either way.

Q. An hour before or an hour after noon?

A. No, it wouldn't have been in the afternoon.

Q. It wouldn't have been in the afternoon?

A. No.

James Milroy

- Q. Was it before the trouble?
 A. It definitely was.
 Q. Were you there when the trouble occurred?
 A. I was not.
 Q. When you were on that roof, were you on any particular portion of it?
 A. I was on fairly much all of it.
 Q. Was there somebody else with you?
 A. There was.
 Q. There were two of you up there?
 A. That's correct.
 Q. No more?
 A. No more.
 Q. Just two. Now, prior to that date had you been on the roof?
 A. About 20 times.
 Q. From what date to that date?
 page 901 } A. I would say from a year prior to that.
 Q. From a year prior. About 20 times?
 A. Twenty or more.
 Q. Thank you, sir.

CROSS EXAMINATION

By Mr. Harrigan:

- Q. You live with John Wright?
 A. That's correct at the present time.
 Q. Are you his brother-in-law?
 A. That's correct.
 Q. Was John Wright with you that day?
 A. He was not.
 Q. Now, does he work with you?
 A. He was relieving me prior to that and had been on that roof and had done some work on that roof, but that was a considerable amount of time prior to this occurrence.
 Q. Now, you say that you were on the roof on the 25th?
 A. That's right.
 Q. What day was that?
 A. I don't know the day. I'm just assuming that was when the trouble was up there. That was the 25th. I was there definitely that day because I seen the occurrence on my way back from Seven Corners out in front of the
 page 902 } barber shop.

James Milroy

Q. What time did you come back to Seven Corners?

A. I imagine that must have been in the neighborhood of after three or somewhere in there. These times aren't of too—I am not too accurate on these times, because at that time it didn't mean anything. I go from very early in the morning to sometimes dark at night. It is very, very difficult for me to state a specific time.

Q. Now, who was with you?

A. Mr. W. E. Haley.

Q. What time did you get down there that day?

A. I imagine it was between the hours of 11 and 12.

Q. You said you had some work to do on the roof?

A. That's right.

Q. How long did that work take you?

A. When I said work, this work consisted of just viewing it with a professional engineer to give me a little lead on that situation that I had on the roof. It was very difficult. He is a qualified engineer. That is his purpose of being there with me, so actually as far as work, we was only up there a short time, just a short time.

Q. Now, what is the short time?

A. I would say to take my ladder and get up on the roof, I would say no more than 15 or 20 minutes. It
page 903 } couldn't possibly have been longer than that.

Q. All right, sir. You were getting on, looking around and getting off?

A. That's right.

Q. Fifteen or twenty minutes?

A. That's right.

Q. What was the condition of the roof when you went up there?

A. Well, you mean—well, I will tell you it's a shag roof, and it has copings all the way around there, and it stays wet up there, and so many times you have to walk the copings up there. It gets fairly heavy with water.

Q. That is what you were doing?

A. I walk these copings almost every time I go up there. During the summer we don't have the water accumulation, but due to the water accumulation we walk these copings.

Q. Copings, you call them?

A. Copings. Yes, that is the metal copings.

Q. Are there drainoffs for the roof?

A. This jolson pipe runs the entire—emptying the 7-11.

James Milroy

This comes completely down to the very end of the shopping center which is a direct jolson line, and that is the problem that I had up there so many times that I have page 904 } been up there.

Q. Were you there the day before?

A. I feel fairly sure that I wasn't there the day before, because at the time that I had been going there, all of these times it was on request from Jack Conway of Better Homes. So if I was on there the 25th, I wouldn't have been on there the 24th, because I only went there on request.

Q. You kept saying if you were there on the 25th.

A. I was on the roof the day that the shooting occurred. I assumed that was the 25th.

Q. All right. Now, were you ever up there after the 25th?

A. I was up there three or four times after the 25th.

Q. How soon after the 25th?

A. A couple of weeks after that, a good couple of weeks.

Q. So you say there were two of you up there that day?

A. That's correct.

Q. Did you know Commander Rockwell?

A. Never seen him in my life, picture or anything.

Q. Do you know Mr. Jenkins?

A. I know a Mr. Jenkins. I don't see where it has anything to do with this. I know an elderly carpenter up page 905 } on Wilson Boulevard who does work for me whose name is Jenkins.

Q. Has he ever worked on that roof?

A. Oh, no.

Q. How about a Mr. Stevens?

A. I don't know Mr. Stevens.

Q. All right, thank you.

The Court: Any further questions?

Mr. Hassan: No further questions. Thank you very much.

The Court: Let me ask him a question.

Mr. Milroy, can you remember that day, the day of the shooting, if there was an accumulation of water on the roof?

The Witness: I'm sure there was an accumulation of water of the roof.

The Court: All right. May the witness be excused?

By Mr. Harrigan:

Q. Well, on that point—now, you talk about an accumula-

James Milroy

tion of water. Are you saying the roof was covered with water?

A. Due to low places and improper drainage of this jolson line after the rain, it is possible for a couple of page 906 } weeks to be water, and I know that there was water, and it completely almost—if there's a long draught, it stays with water on there. That is our problem.

Q. Now, I ask you was the roof completely covered with water.

A. Not completely covered, no.

Q. Could you walk around without stepping in water?

A. You could walk around without stepping in water. That would be possible.

Q. Were the drains clear when you went up there?

A. The drains were clear; they were clear, but they wasn't in function.

Q. Did you get wet while you were up there?

A. No, I didn't get wet.

Q. What about the man that you were with? Did he get wet?

A. He possibly could have.

Q. Well, not possibly. Did he get wet? Did you observe that?

A. No.

Q. All right. You were all over the roof, you said, is that right?

A. I was from one end to the other.

page 907 } Q. That's all.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Mr. Milroy, I'm going to show you a picture and ask you whether you recognize this building, and please just answer yes or no. Just yes or no.

A. No.

Q. All right. I show you another picture and ask you whether or not you recognize that building.

A. No.

Q. I'd like to have this marked as Commonwealth's Exhibit No. 12-A, it being photograph number 3577-12 taken by Mr. Taylor. I'm going to offer at this time subject to additional testimony by Officer Taylor.

James Milroy

The Court: Is there an objection?

Mr. Harrigan: Is it being offered now?

Mr. Hassan: Yes, sir.

Mr. Harrigan: Sir, there is an objection. I don't know when the picture was taken. I think that picture is a very small section that was taken. I don't know what day it was taken, and I am not sure what it purports to show; I have an idea, but the date it was taken I think is significant, and there hasn't been any foundation.

page 908 } The Court: I don't think there is any harm in permitting him to be examined as to what he recognizes about the picture. If it is not officially authenticated by his testimony, then it won't be admitted, but I think it is all right for him to be examined as to what he can recognize in it.

Mr. Hassan: All right.

Now, will you tell us what you recognize this picture as showing?

The Witness: The heating stacks were corked with cement which I had done. I see that the flashing, the asbestos flashing which goes vertical and horizontal has been patched in here which I have done, and I see some of the laps on the metal coping which was tarred which I did back in March.

By Mr. Hassan:

Q. What roof is that in that shopping center?

A. I recall the blocked area there with the wires and all. It is hard to get to. I would say that was above the halfway point toward the 7-11 from the Goodwill Industry toward the 7-11.

Q. Above the halfway point?

A. I would say that.

Q. Then probably in the neighborhood of the laundromat or the pet shop?

page 909 } A. Yes, I would say that.

Q. What else does that picture show in connection with your work, I mean?

A. Well, I have had trouble with that beauty shop up there. The water does stay there, and therefore it is subject to entering the building. Then I would have to check these areas that are containing this water. They were more likely to be leaking.

Q. I would like to show this picture to the jury, Your Honor.

James Milroy

The Court: I am not going to receive it over objection at this point because I don't believe his description of the location is sufficiently precise. He said it could be, or they thought it was, but he didn't say for sure. So if there's a continuing objection to this, I will sustain it for the time being.

Mr. Harrigan: There is.

The Court: You can produce the man who took the picture.

Mr. Hassan: No further questions.

RE CROSS EXAMINATION

By Mr. Harrigan:

Q. You said that you put some flashing around page 910 } a couple of pipes, is that what you said?

A. I put some roofing flashing on a compound which is an asbestos tar, practically on that complete area from one end to the other on joints that wasn't even apparently leaking. I had put stuff on them back in March.

Q. You put it on the joints, right?

A. I put it on the joints and around the stacks that were coming out of the roof, any place the water could infiltrate through.

Q. This stuff that you put on, do you buy that commercially?

A. That's right.

Q. Do you buy in large quantities commercially or just whenever you need some, you go back and get more?

A. I buy five gallon cans at a time.

Q. Now, there wasn't any place in the roof that there was water that you could step into up to your knees, was there?

A. No.

Q. I mean, two feet of water?

A. No.

Q. That's all.

The Court: May the witness be excused?

Mr. Hassan: He may be excused.

page 911 } The Court: You are excused and free to go.
Mr. Milroy. Thank you.

(Witness excused)

Richard Logan

Whereupon, RICHARD LOGAN was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir?

A. Richard Logan.

Q. What is your military duty?

A. Explosive Ordinance, Disposal Specialist.

Mr. Harrigan: What is your rank?

The Witness: Spec. 5.

By Mr. Hassan:

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when you performed services in Arlington County, Virginia?

A. I believe so, if you want to call what I did services.

A. Yes, sir.

page 912 } Q. What did you come here to do, sir?

A. Operate and instruct a police officer in operating a mine detector.

Q. Did there come a time when you operated this mine detector?

A. Yes, I did.

Q. Where did you do this?

A. I don't know the exact area.

Q. Do you know who the police officer was?

A. No, I don't.

Q. Where did you report when you came to Arlington?

A. I picked up a police escort at the Holiday Inn on Glebe Road and Shirley Highway, I believe.

Q. They took you wherever it was that you went?

A. Yes.

Q. Now, when you got there, what did you see, if anything?

A. Just a bunch of police officers, a residential area.

Q. In regards to the landscape?

A. We were stopped in a residential area, and they took us between a couple of homes down to a park.

Richard Logan

Q. What did you do with the mine detector at the park, if anything?

page 913 } A. I set it up before we went through, came down through. They asked me to check buildings, trees and such, and I told them I couldn't do it because it won't work that close to a building, and we went down across the street into a railroad crossing, a railroad trestle over a small creek. We checked on one side of the trestle, and I tried checking the water underneath the trestle.

Q. Did the equipment you have work in checking the water?

A. I couldn't really tell without checking something else first. I had the thing set on a low range because of the railroad tracks. It's not too effective.

Q. Did there come a time that you made a test with any particular items?

A. Yes, we checked it with a police officer's weapon.

Q. What did you discover when you made that test?

The Court: Excuse me. What was the last thing you said?

By Mr. Hassan:

Q. Checked it with a police officer's weapon.

What did you discover at that time, sir?

A. The way the mine detector was set up on a low range reading, it would detect a handgun at about 18
page 914 } inches.

Q. Did you have occasion to measure the depth of the water?

A. I did not. I had a police officer, I instructed him how to use it, and he walked out in the water and it came out to the middle of his thighs, and I stopped him there to keep the mine detector from getting wet.

Q. Would the mine detector work in that depth of water?

A. Not the way it was set up.

Q. Did your efforts prove anything?

A. I didn't find anything.

Q. How long did you attempt to find anything?

A. About 15 or 20 minutes.

Q. Who was with you, sir?

A. My assistant on the problem was Specialist Frey. He was a PFC and a police officer.

Q. You don't know the name of the police officer?

Richard Logan

A. None of them. There were about four or five of them around.

Q. Thank you very much, sir.

CROSS EXAMINATION

By Mr. Harrigan:

Q. What time did you arrive down in this area?

A. I don't know exactly. It was late afternoon.

page 915 } Q. It was in the afternoon?

A. Right.

Q. How many other army people were with you?

A. Just one.

Q. That was your assistant?

A. Yes.

Q. You brought this mine detecting equipment with you?

A. Yes, we did.

Q. How many police officers were there when you arrived?

A. Six or eight, maybe.

Q. Did you all proceed down to the park?

A. No.

Q. How many of you went down into the park?

A. I was directed by one. There were two officers in front of me, and I don't know who else was behind me.

Q. Did you see any other officers down in the park?

A. I wasn't paying any attention as to whether there were or not. They asked me to check certain areas pertaining to that.

Q. Okay. Did you check near any foot bridges? Was there a stream there?

A. Yes.

Q. Did you check near any foot bridges by the
page 916 } stream?

A. The only bridge we walked across the stream was the railroad trestle itself.

Q. All right. Now, did you check near any foot bridges on the stream?

A. No.

Q. Which way did you go?

A. What do you mean by which way?

Q. What were you checking? Were you just checking the river?

A. That is what they asked me to check was water that was deep that they couldn't see in.

Richard Logan

Q. Okay. Now, by the trestle it was fairly deep water there, right?

A. Yes.

Q. And other sections apparently weren't too deep, is that right?

A. No. From what I saw of the stream, it was rather shallow upstream from the trestle.

Q. Now, did you go upstream from the trestle with your mine detector?

A. No.

Q. Where did you go with it?

A. Just right around the trestle itself.

page 917 } Q. Were there any other officers looking upstream where it was shallow?

A. Not that I can remember; there might have been.

Q. Did you come back the following day?

A. No.

Q. So you were there some total of 15 or 20 minutes?

A. We were there together longer than that, yes, but I was searching probably 15 or 20 minutes.

Q. Now, was a police officer using your detecting equipment?

A. Yes.

Q. How many sets of detecting equipment did you have there?

A. One.

Q. Was he the guy that was in the river walking around with it?

A. Yes.

Q. You were standing on the dry shore directing him?

A. Yes. I showed him how to use the equipment and he put the earphones on and took the probe out and walked out beside the trestle.

Q. Was he walking upstream or downstream?

A. He just walked straight in, waved it
page 918 } around and walked out. He couldn't hear anything.

Q. One place in this stream he walked in, he walked out, and that was the sum total of his mine detecting search?

A. Yes.

Q. Now, that mine detecting equipment—how far would it detect metal on some of the other ranges you have, like in water?

Richard Logan

A. The model that I have is designed to throw a three foot radius around the probe on a high range. I imagine it would detect on hard clay an M-22 army range or 19 land mine.

Q. Through hard clay?

A. Well, it doesn't really make much difference what it is.

Q. And through water, how far can you pick up?

A. About the same distance.

Q. About ten and a half inches on high range?

A. Other than you normally operate on a high range unless there is a high metal content in the area, but my manual just says ten and a half inches for an army range in hard clay.

Q. The question was, how far will it go through water?

A. Approximately the same distance.

Q. You told us on direct examination that it
page 919 { would detect a handgun 18 inches in water,
didn't you?

A. No, in open air. I can get a weak signal. I get a weak signal off this handgun at 18 inches.

Q. Okay, that is all.

Mr. Hassan: No further questions.

The Court: May he be excused?

Mr. Hassan: Yes, he may.

Specialist Frey, please?

The Court: All right, sir, you are excused and free to go.

(Witness excused)

Mr. Hassan: May we approach the bench, Your Honor?

* * * * *

Conf.

11/28/67

page 4 { Mr. Hassan: The deputy clerk and the hand-writing man have been waiting and waiting over at the ID bureau and photograph lab and nobody showed up.

Mr. Harrigan: We are not going to show up. We all know certain things about certain witnesses in this case and it would be more prejudicial for one of the counsel to leave to go over there. That was our problem.

Mr. Morris: We ask the Court, possibly, could we just have the expert make duplicates of what he does at the police department, not what he does at the private office, but copies of what he does over at the police department on the county equipment.

Mr. Hassan: He is going to make enlargements with the photograph equipment to take home. He is just going to make negatives.

Mr. Morris: If we have the opportunity and funds, we could have an expert take a look at them, too. Then we wouldn't have to hold the Court up.

Mr. Harrigan: We would like to have a copy of Conf. the same enlargement.

11/28/67 The Court: Do you have any idea how many page 5 } shots he is going to take of this thing?

Mr. Hassan: I don't have any idea. He is going to take three or four enlargements and, apparently, take the negatives home. He is going to take close-up shots. I don't know how he does it. He said he was going to make enlargements on the signature and on the printing. He is just going to do the negatives over here and take them home.

The Court: I will let him make the negatives available to the defense after he is through with them and if the defense wants prints of those, they can make them up at their own expense.

Mr. Morris: He is making them up at the county's expense.

Mr. Hassan: What is the difference?

Mr. Morris: He gets paid separately anyway. He is a private individual. He gets paid by the county.

Mr. Hassan: What is the difference, once he gets a fee and uses our equipment?

Mr. Harrigan: Is it that much harder to make two instead of one? If we get a man and already have the enlargements and take them down and show them to him—

Conf. Mr. Hassan: I am not going to promise you any-
11/28/67 thing, if I don't know what he is going to do.

page 6 } The Court: If he is going to work from negatives, he could get those up. If he is going to have a print made from the negatives, I will let duplications be made of the prints for the defense. If he is not going to make prints, but just work with the negatives, you can have the negatives when he is through with them.

Mr. Harrigan: All right.

David William Frey

Whereupon, DAVID WILLIAM FREY was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you state your name, sir, and your rank?

A. David William Frey. I am a rank specialist, fourth class.

Q. What is your duty?

page 920 } A. I am an EOD assistant.

Q. What does "EOD" mean for the benefit of the jury?

A. Explosive Ordinance Disposal.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when you had occasion to perform a duty in Arlington County, Virginia?

A. Yes, sir.

Q. What time of the day or night was that, sir?

A. I am not sure of the exact time. It was after duty hours. We got off duty at 4:30. It was somewhere after duty hours on that day.

Q. When you say we, who are you referring to?

A. Specialist Logan and myself.

Q. That is the Specialist Logan who just testified here in this court?

A. Yes, sir.

Q. Now, what duty did you perform in Arlington that day?

A. I led Specialist Logan with a Model 153 mine detector.

Q. Was it effective?

A. No, sir.

Q. How long did you use the mine detector?

page 921 } A. I am not sure of the exact time, but no more than—I didn't check the time, but I wouldn't say it would be any more than 35 minutes to an hour.

Q. Is that the time you were in Arlington, the time you were using the detector?

A. It was the time that we were using the detector from the time we got there until the time we left. I wouldn't say we

Ernest R. Davis

were there any more than a hour. I didn't check with my watch or anything, just judging.

Q. Was there any reason why the equipment would not be effective?

A. Up next to the buildings and there you have water lines running in and out. That would throw it off. Down next to the railroad tracks you have rails. Any kind of a can, just any piece of metal, it will throw that off.

Q. How far from the object will it work?

A. The manual states three to four feet. That is with it functioning properly, the ideal situation, but if you say you have like the railroad tracks down there, if you were trying to search an area that would say about five feet from that or four feet, it will throw it off. So we had it on low range and—

Q. Did you run a test to see how far away it
page 922 } would detect a gun?

A. Yes.

Q. What was that distance?

A. I would say about 14 inches, maybe 15.

Q. I have no further questions.

Mr. Harrigan: No questions, Your Honor.

The Court: All right. May he be excused?

Mr. Hassan: Yes, he may, Your Honor.

The Court: All right, sir, you are excused.

(Witness excused)

Mr. Hassan: Would you check and see if there are any other civilians out there?

The Sheriff: Yes, sir.

No, sir.

Mr. Hassan: Very well, Your Honor, I would like to have Detective Davis.

The Court: Let the jury retire.

(Out of the presence of the jury)

VOIR DIRE EXAMINATION

The Court: Detective Davis?

By Mr. Hassan:

Ernest R. Davis

Q. Detective Davis, we left off at two o'clock. Did there come a time when you and Sergeant Pever had occasion to go to the interview room where the defendant
page 923 } was and talk to him?

A. Yes, sir.

Q. What time was that?

A. About 2:05 p. m.

Q. At that time was he advised of his rights again?

A. Yes, sir.

Q. Who advised him?

A. Sergeant Pever.

Q. What did he tell him?

A. He told him that any statement he made had to be voluntary and could be used for or against him in the court. He had a right to an attorney; he didn't have to make any statements if he didn't wish.

Q. Did you tell him whether or not he was charged with anything?

A. No, sir, he told him he was a suspect in a felony.

Q. And had there been a warrant obtained at that time?

A. No, sir.

Q. Did there come a time when he did make any statements?

A. Yes, sir.

Q. What did he say?

A. He stated that he had an argument with
page 924 } his wife. He couldn't remember about what. He left the apartment and went for a walk and stated that he hadn't been in Bonair Park. Also, he hadn't been behind any houses. He hadn't run from any scout cars. He said he had been to Westover.

Mr. Harrigan: Did you say he had been to Westover? Is that what you said?

The Witness: Yes, sir.

Mr. Hassan: Well, now, if Your Honor please—

Mr. Harrigan: I didn't hear him. I am not examining him. I just didn't hear him.

Mr. Hassan: I was hoping you weren't. Go right ahead.

The Witness: He said that he had been to Westover, and he was going to call his wife from the Westover area across the street from the post office and that he had walked to a bus stop and the bus didn't come, and he walked from that

Ernest R. Davis

bus stop to another bus stop. It still didn't come, and he had walked to two or three different bus stops to the one where he had been picked up at. And also he stated that he had gotten wet from walking and hitting the bushes with his hands as he walked by.

By Mr. Hassan:

Q. What else did he have to say?

page 925 } A. He said he didn't drive a car, but his wife had access to a car, and then also about the scene again on Wilson Boulevard.

Q. Did he state what he saw when you came to that scene?

A. Yes, sir.

Q. What did he say?

A. He stated he saw a body.

Q. Did he describe what he saw?

A. He just said he saw a body and at first he said the body was lying on the right side with his arms folded, and then he changed and said the body was on the back, lying on the back. He stated he didn't know who it was, and then he repeated again what he had said previously, "Am I supposed to have done that?"

Q. Didn't anybody ask him whether or not he saw any blood?

A. Yes, sir.

Q. What did he say to that?

A. He said no.

Q. Did he say anything about walking?

A. Well, he said he was in the habit of walking quite a bit. He often did it.

page 926 } Q. Did he state why he was walking in the Westover area?

A. It seems to me he said something that he went to Westover to walk by an apartment where either he and his wife or his wife had previously lived for sentimental reasons.

Q. Did he tell you where that was?

A. No, sir, not that I remember. No, sir.

Q. Now, did there come a time when he stopped talking?

A. Yes, sir.

Q. What time was that?

A. He said 2:05, he went in there. Roughly about ten minutes.

Q. Roughly about ten minutes?

A. Yes, sir.

Ernest R. Davis

Q. Now, did there come a time when an attorney arrived for him?

A. Yes, sir.

Q. What time was that?

A. About 2:20.

Q. Then after the attorney arrived, what did you do, if anything?

A. I left the room. Both of us left.

Q. Then what did you do?

page 927 } A. We stayed in the office there in the immediate area.

Q. Did there come a time when you got a warrant?

A. Yes, sir.

Q. What time was that?

A. Shortly after three p. m.

Q. I think that is all the testimony that is involved in the controversial matter. That is by no means all of his testimony that I am going to get from him but not related to this particular issue.

The Court: Do you object to this going to the jury?

Mr. Harrigan: I would like to ask him some questions on it first.

The Court: It seems to me to be more exculpatory than incriminatory. It is the Commonwealth's duty to produce exculpatory matter, and I have previously ordered the Commonwealth to do that.

Mr. Harrigan: I would like to ask him just a few questions on what he just said.

The Court: All right.

By Mr. Harrigan:

Q. Now, you say you took him to the Violations Bureau and you had that tape made, is that right?

A. Yes, sir.

page 928 } Q. Now, it is apparent from the end of that tape that he had not been informed what he had been arrested for to that point.

A. Yes, sir.

Q. And he had not up to that time the end of the tape was made?

Mr. Hassan: Now, we just established that until three

Appendix 1

Psychiatric Examination of John Patsalos
by Dr. Thomas M. Cusack
April 15, 1957

C
O
P
Y

THOMAS S. CUSACK, M. D.

400 Clinton Avenue

Brooklyn 38, N.Y.

April 15th, 1957

Report of psychiatric examination, study and survey of:
John Patsolas,

25/32 Yates Ave., Bronx, NY.,
made at my office Feb. 23d, 1957 and March 8th, 1957.

He is 18 yrs. old and has been involved with the law on one or two occasions-----placed on probation. Was sent to Bellevue, by Probation Dept., Bronx County Court, because of violation of his parole.

On general observation: He made a normal impression in every way. Emotionally stable, and cooperated very well.

He gave a clear, connected history of his life.
Showed good attention, retention, concentration and power of recall.

No evidence of any trends, illusions, delusions or hallucinatory experiences.

He stated he was sorry for his anti-semitic activities or participation in youth organizations. Said he 'wants to forget all about it.'

There was no evidence of any psychosis or any dangerous tendencies.

He has good insight, in every way.

Despite the fact that the Court decided that he receive psychiatric treatment, and prolonged supervision, I found NO evidence of any psychiatric condition, and he is now symptom-free.

Evidently, the whole anti-social affair was episodic in nature.

(Signed) T. S. Cusack

P.S. All reports attached.

Appendix 2

Autobiography of John Patler
(*Stormtrooper* magazine,
vol. 6, no. 1, Spring 1967, pp. XX - XX)

Know Your Party Officers

THIS MONTH:



JOHN PATLER

I begin this story by mentioning my father. His name was Christos Patsalos. He was born in Southern Europe, in Greece.

In the beginning of the century, my father's father, who was a soldier in the Greek Army, was killed in battle. Shortly afterwards, my father, along with his widowed mother, Anathasia, left his native peasant village in Sparta, Greece, to migrate to America.

My father began his new life in America as a laborer on the railroad. Soon, he became an American citizen and joined the Republican Party.

Through hard work, my dad

NOTE: This is the story of John Patler. In writing his autobiographical sketch, I have asked Captain Patler to depart from the standard format of "Know Your Officers" column and write at length in the first person.

I believe his story will be of great interest to all our readers and those of you who have met John Patler and have kept up with the dedicated work he has been doing for our people and our cause these many years.

I would like you to keep in mind that this is an unfinished story. The end has yet to be written, and what has been written thus far will tell you something about the background of one of our very best fighters.

The Commander

saved enough to open a little restaurant at the famous polo grounds.

In 1936, my father met and married a very beautiful girl who was the daughter of other Greek immigrants. Her name was Athena.

I was the first of two sons born of this marriage. My birthdate was January 6, 1938. My younger brother, George, was born the following year in November.

When I was five years old, my mother decided to leave my father, the exact reasons for which I have never learned. My mother took me and my brother to stay with our grandmother who lived in Harlem.

I remember that day very clearly because it was the last time I saw my mother alive.

On October 7, 1943, my father shot and killed my mother when she returned to pack her bags. It was a crime of passion; one of those freak episodes in life when a man permits his emotions to blind his rational thought. My father was subsequently convicted of manslaughter and sentenced to a term in Sing-Sing penitentiary.

The death of my mother was one of those tragedies that alter the course of many lives. My

father, who came to America to begin a new life, ended up in prison. My mother, at age 27, was dead--her life ended before it even began; and my brother and I found ourselves robbed of our parents, living and growing up in the jungle-slums of upper Manhattan.

We lived with our grandmother in a tenement on 119th Street and Lexington Avenue. The neighborhood was bad, with street gangs roaming the area.

My grandmother was a hard-working, quick tempered, strong-willed woman. She served an important part in my life. I learned a lot from her. She was an immigrant and had migrated to America with her husband. Together, they raised a family of two sons and two daughters. Their oldest daughter was my mother.

When my grandmother's husband died of a heart attack, she had to provide for the entire family. She managed to rent a little space for a stand in a huge market place on Park Avenue to sell flowers. The market place, known as "Paddy's Market" stretched for more than six square city blocks near Harlem.

Jewish merchants predominated in the market place. Everywhere you turned, you would find a Jew selling something.

Here in the busy market place, my education and enlightenment of the Jews took place.

My grandmother was an extremely religious woman. She was one of the very few Christians who occupied a stand in the entire market. I remember like it was only yesterday how my grandmother would argue and fight with Jews over religion and politics. The Jews would gang up on her and ridicule her religious beliefs at every opportunity. I would sit for hours, watching and listening to my grandmother argue with the Jews. Sometimes, the arguments got so hot, my grandma had to use her broom on Jew heads. She was a fighter.

When I wasn't going to school, I stayed with my grandmother at her flower stand helping her. We made over half the flowers by hand.

My grandma was tireless. She lived and worked and sweated for the family, which now included two more mouths to feed--me and my brother. Although we were poor, we had enough to eat and we were proud and unafraid of hard work. One time I swal-

My brother and me on a rooftop in Harlem about 1944



lowed a nickel and my grandma wouldn't let me flush the toilet until she had checked to see if the nickel had made its exit. She didn't give up until she got that nickel.

Every Friday, my grandma sent me and my brother down into the crowded subways to sell flowers to the people coming home from work. People would take one look at us and buy some flowers out of sympathy if for no other reason. Down in that subway, I received some of my first lessons on race. My brother and I were jumped by a bunch of wild niggers who demanded our money. Even though we were outnumbered, we fought back. We were operating in a pretty tough neighborhood, but we were never bothered by white kids--only Negroes and Puerto Ricans. When the niggers attacked us, we were called "white trash". When the Puerto Ricans attacked, we were called "Gringos". I learned early that the only way you stop terrorism and force is with superior terrorism and superior force.

The one thing that I remember the most of life on the streets of Harlem was the fighting. Hardly a day passed that I was not involved in some kind of fight with the niggers and the Puerto Ricans. And most of the fighting was done in self defense.

Once I got into a fight with a tough Puerto Rican kid that lived around the corner from us. His name was Johnny Rio. As we were slug-ging it out, a crowd of kids gathered to watch. Most of the kids watching were Puerto Rican and they were all cheering for Johnny Rio. From the corner of my eye, I got a peek of my grandma racing down the street towards us. I figured she was going to break up the fight, but instead she pushed her way to the front of the crowd and began cheering for me! My grandma was no ordinary grandmother. I won the fight.

The schools I attended were P.S. 57 and P.S. 83, which was known also as "Galvani Jr. H.S.". P.S. 83 was located on 109th Street on the

borderline between the White (mostly Italian) neighborhood and a Puerto Rican area. Most of the students were either Negro or Puerto Rican. The remainder were White kids of different nationalities like Italian, Greek, Irish and German.

In the public schools, we were pumped full of "progressive education" garbage. Over and over we were told that White and Negro were "equal" and that we were all supposed to be "brothers" and of how awful and wrong it was to be "prejudiced". At first, I swallowed it all. We were even made to participate in interracial dances and plays and taught to sing race-mixing songs.

In the classroom, we were fed the "brotherhood" and "equality" business and they made it sound good and appear workable. In the streets there arose a direct contradiction to this classroom propaganda.

Down in the streets, I came face to face with brutal reality where the color of your skin was your uniform. The niggers and Puerto Ricans terrorized, bullied and attacked White kids. Each side recognized its enemy by race. Outside of the classroom a state of "war" existed between the races. In the street, "Brotherhood" and "tolerance" vanished.

At Galvani Junior High School (P.S. 83) I became the Editor-in-Chief of the school magazine and also the Art Editor. I even created two popular comic strips for the school magazine. One was called "The Adventures of JET JORDAN", an inter-planetary policeman who battled against an arch-villain called "RED-RUM" ("murder" spelled backwards). The other comic strip was called "Galvani Gus", a little cartoon character who was always getting into trouble.

Also at P.S. 83, I acted in a number of school plays and had a little ventriloquist act of my own.

While I was attending P.S. 83, my father was released from Sing-Sing penitentiary and he began a long court battle to get us back.

In the early fifties my grand-



1959 as a U.S. Marine with my brother

mother died and my brother and I went to live with our dad in the Bronx.

My brother and I were two tough kids, hardened by the struggle of growing up on the streets of Harlem. The move to a quiet, lower middle class neighborhood where my father lived was a difficult adjustment to make. We naturally gravitated toward the tougher elements in the new neighborhood and in the local high school where I was enrolled.

An added burden to adjustment in our new environment was the fact that our grandma had naturally hated our dad and she had "brainwashed" us to believe that he was an evil man for having killed our mom. In the beginning, this caused a lot of difficulties in our relationship.

Although I do not subscribe entirely to the almost impervious environmentalist doctrine that places strict emphasis on environment while practically ignoring heredity and race as contributing factors in determining what you turn out to be, I nevertheless recognize from my own experience that environment DOES play a significant, but not exclusive role in your upbringing.

Race and heredity are equal to, if not MORE important than, "environment". For instance, you can not become an artist by being born in an art studio; nursed and raised by a painter; or by sitting in art schools. If you are not born with the talent in

the first place, no amount of art schooling or artistic environment will ever turn you into an artist.

The same applies to college. You can sit in college for the rest of your life and it will not make you "intelligent" if you were not born with the intelligence in the first place for college to do you any good.

Our difficulties with our dad led us to Domestic Relations Court. Until the court could decide, we were confined in New York City's gloomy Youth House on 12th Street, the same place Lee Harvey Oswald did a stretch when he was a teenager.

In the Youth House I got into lots of fights with niggers by refusing to be pushed around and bullied. I still carry a scar on my left eyebrow from a fight with a nigger I beat up who tried to get me to go in for some perverted sex acts.

My brother and I were kept in the Youth House for a little more than two weeks and then the court released us and sent us back home.

As a result of hanging out with the wrong kind of crowd, I was picked up in 1954 as an occupant of a stolen car after a wild chase by the police. The chase ended when we crashed into a tree in a wooded area. Both the driver and I fled from the wrecked car into the woods to escape. The police shouted for us to halt and when we didn't, they fired bullets at us. I got away by crawling and doubling back around to where the chase began and where a crowd was now gathering to watch the cops search.

Abe (Al) Mirenda, the kid who stole the car, climbed up a tree and was apprehended. He cracked under questioning and identified me as the other occupant. The cops came and got me at 3 a.m., and I spent my first night in a City Prison. This experience taught me a valuable lesson. From that day on, I decided to stay clear of anything illegal.

Al Mirenda was packed off to reform school and I was fortunately judged a "youthful offender" and

placed on probation. Every Tuesday, for the next couple of years, I was required to report to a probation officer at Bronx County Court House.

About this time, I began to take a keen political interest in the Jews. I began to notice that Jew commies and spies were being apprehended and convicted by the government. A year before I ran into trouble with the law, the Rosenbergs were executed as traitors. I began to study up on the Jews and their connection with Communism. I discovered that from its inception, Communism was conceived, dominated and led mostly by JEWS beginning with Jew Karl Marx, straight through to the Jew traitor Rosenbergs on up to the Jew Herbert Apatheker who today is the spokesman and head theoretician of the Communist Party in the United States.

The high school I was attending was named Christopher Columbus H.S. Most of the teachers were Jewish and the overwhelming majority of students were Jewish.

In my social studies class, we were told that Hitler and the Nazis were "terrible monsters" and "brutal killers" of "six million innocent Jews". No one ever mentioned the Americans who died, or the millions upon millions of people that were exterminated by the commies. Hitler's book "Mein Kampf" came under special attack by the Jew teachers. They never stopped ranting about its "insane" contents.

One of the reasons I couldn't accept the arguments presented in class against Hitler was because the very people, mostly Jews, who were telling me to hate Hitler were in fact his very worst enemies. Believing anything the Jews had to say about Hitler would be like believing what the Devil had to say about God.

One day I went to the school library and searched for a copy of "Mein Kampf". I wanted to read it for myself. It was a big book kept under lock and key in a book case. I got the librarian to open the case and let me look at the book. I read it and

I was reborn! I was sixteen years old.

My interest in politics increased and I developed an insatiable curiosity of National Socialism and Adolf Hitler. I read everything I could find about the Nazis. At this time, like many other men I would soon meet, I felt all alone in my admiration of Hitler.

Although Hitler's movement was rigidly nationalistic and distinctly "German", I recognized that Adolf Hitler was the ONLY White man to take the FIRST step in the right direction and for this every White Man will forever be indebted to Adolf Hitler and the German people.

I realized even then back in the fifties, that if the White Race of People were to survive, we would have to disregard the superficiality of "nationalities" and the fatalistic promotion of one single group of Whites above other White People and instead UNITE as brothers and sisters of one great worldwide family of White People.

Late in 1955, I was boxing for the Dept. of Parks with my old friend, Nick, who was a fellow artist. Nick was a Greek kid like me and we shared many common interests. During our breaks, we discussed the Jews and their involvement in Communism and we both agreed something should be done. Nick mentioned that he knew some friends who were involved in a movement to do something about the Jew and nigger problem. He took me to meet his friends. They were the Dommer brothers, Paul and Luke. Paul Dommer was a young idealist like me. His older brother Luke was a Marine veteran of World War II.

I became good friends with the Dommers, and they loaded me down with literature presenting the views of their organization called the "Nationalist Party". They also gave me a copy of "Common Sense" put out by Conde Mc Ginley. I took all of the literature home and I read

every word of it. That night I decided to dedicate my life to the White People's struggle.

Soon the Dommers took me to their leader, West Hooker. Hooker was from a very wealthy family and he lived in a beautiful home in a very exclusive area in Larchmont, N.Y. Hooker gave me my first political training and taught me everything he knew about the Jews. I idolized him and looked to him for leadership.

With Hooker's help, the Dommers, Nick and I and another kid named Charlie Beveridge formed a youth section of the Nationalist Party. We called it the "Nationalist Youth League". We were a rowdy bunch that went around picketing, fighting and busting up Communist meetings. This was during the so-called era of "McCarthyism".

Toward the end of 1956, at the age of 17, I produced my first anti-Jewish leaflet. It was a leaflet urging a boycott of Jew businessmen who were attempting to take over the Board of Trade of City Island (a tiny island connected by bridge to the Bronx). I was arrested for "criminal libel". The Grand Jury failed to indict me and I was set free since no crime was committed. Free speech prevailed.

But now, although I wasn't convicted, the arrest was considered a violation of my probation and when my probation officer found out it was anti-Jewish literature I had distributed, he had me sent to Morrisania Hospital in the Bronx to undergo "psychological testing". I now began to pay the price for my political beliefs.

At Morrisania, I met a Mrs. McNamara, a city psychoanalyst. She was to administer the "tests". I was given a whole variety of tests with blocks, puzzles and diagrams--the whole works--and when we got to the Rorschach test (ink blots), "strange things" began to happen.

Mrs. McNamara would begin asking me if I saw any "blood" in the pictures ... or did I see any "bodies"

Continued on next page

How Crazy Can You Get?



In Canada there lives a millionaire who is known to do things slightly obtuse to the nine-to-five people of the world. Here Mel Lastman wears a wool mini-skirt as he walks downtown Toronto streets with his companion, Clara Sarkozi, who wears a white pants suit.

WHAT'S THIS?

ה'טלער
האט געהאט
רעכט

IT MEANS: HITLER WAS RIGHT..
IN YIDDISH!



or "instruments of death" or "sex organs?" When I replied honestly that all I "saw" were "butterflies" or "animals" or "girls", etc., Mrs. McNamara would INSIST otherwise and attempt to persuade me that certain symbols in the ink blots looked like blood or sex genitals, until I had to agree with her interpretation that a "red splotch" did look like blood, although that's not what I had seen, and what first looked like a castle tower to me, she insisted I see it as a male sex organ. Mrs. McNamara kept it up with her suggestions and interpretations of the ink blots. I was too young and naive at the time to realize what she was doing. Mrs. McNamara was taking the test for me!! It was a foul, unethical and disgusting thing. If you don't love Jews and niggers, you're supposed to be "nuts". I could only surmise that Mrs. McNamara was one of those blind liberals with a predetermined notion that no "sane" person could be anti-Jewish. She was convinced that anyone who showed manifestations of anti-Jewishness had to be mentally ill and that the tests should prove this.

On the next visit, I found myself in the presence of a Dr. Pierre Rube. He wasted no time in telling me I was quite mad for believing in this "Nazi business" and not loving the Jews and Negroes. I got into a fierce argument with this Jew doctor and he had me thrown out of his office. A whole book could be written on just this one encounter with liberal psychiatrists. Dr. Rube's report was sent to my probation officer.

The following week, when I reported to Mr. Peccaro, my probation officer, he informed me that I had to go to court for a "review" of my case and persuaded me that it would not be necessary to have my father or my lawyer with me.

When I arrived for the court date, I was immediately seized and handcuffed by detectives and taken before a Judge Schwartz. I was being railroaded. I spoke up when I appeared before the judge and protested the fact that I had been tricked into court without my father and my at-

torney. The judge thereupon "appointed" an attorney, who was in the courtroom, to "represent" me--a "Mr. Siegel". I could hardly believe what was happening to me; I was surrounded by Jews!

The judge then began to say that he had reviewed my case and that in the light of recent events (my anti-Jewish activity, etc.), he had found it necessary to commit me to Bellevue Hospital for a period of 30 days for psychiatric observation! Before I could utter a word of protest, the Jew attorney, Mr. Siegel, told the judge that "he" approved of the decision. A few seconds later, I was in the lock-up. That evening, I arrived at Bellevue's psychiatric ward, a political prisoner at 18.

As long as I live, I will never forget Bellevue. I was worried and scared and I didn't know what to expect or what was going to happen to me. In my ward there were more than fifty people--about half were Negro and Puerto Rican. Each new inmate was made to strip off all his clothes when first admitted. You were then given only a cotton robe and shower shoes to wear.

In the ward there were several well known "personalities". One of them was the so-called "Mad Bomber" who terrorized the city in the fifties by planting bombs in movie theatres and phone booths. The other important inmate was Robert Soblen, the Jew traitor captured by the FBI for spying. Soblen was isolated in a cell by himself and watched very closely--even when he went to the toilet.

Everything about the ward was depressing. It was badly lighted and poorly supervised. They had a regular shift of guards who sat in an old creaky chair by the big iron door that stood between the inmates and freedom. The ward was just like being in jail except it was "dormitory" style. There were bars on all the windows and a tight netted wired screen over the bars. The one thing I will never forget is the smell. It was a damp, chilly, "iron" smell that

permeated the entire ward and "stuck" to everything. Most of the time was spent reading or watching TV waiting to be tested. Everyone lived in fear of the test. The test determined whether you would go free or be committed to a mental institution.

Toward the end of my 30 days, I was given a series of tests similar to the type given to me by Mrs. McNamara--with slight variation, and then I was transferred to city prison for another two weeks of confinement.

Finally, I was taken to court and placed back on probation. Paul Dommer, West Hooker and my dad were at court that day. Paul managed to get me a real good lawyer. The lawyer sent me to a psychiatrist of our own choice for examination.

Mr. Cusack was a good Irish-Catholic psychiatrist and he liked me. He submitted a report to the court clearing me of any mental disorders. Dr. Cusack's report contradicted the report by Dr. Rube, the Jew psychiatrist that got me sent off to Bellevue. The nightmare was over!

Now I was back on the streets devoting every spare minute to NYL activities. On one occasion, we traveled all the way to Washington, D. C. to picket with Floyd Fleming for the release of John Kasper.

In school I ran into great difficulty. I never missed an opportunity to rise to defend Hitler or Mussolini. This activity resulted in many scuffles and ejections from class. I earned good grades only in those subjects that interested me.

Late in 1957, all the leaders of the Nationalist Youth League met at West Hooker's house in Larchmont. Hooker was going to pull out of the struggle for a while to earn big money. It was a sort of farewell gathering. At this meeting, Hooker introduced us to a U.S. Navy Commander that was soon to become famous. His name was George Lincoln Rockwell.

Continued on next page

ADS WE'D LIKE TO SEE

This New
Exclusive Product From

Royal Crown

Will Solve Your
KINKY HAIR
PROBLEMS **FOREVER!**



"Us
Tarreyton
smokers
would
rather
FIGHT
than switch!"



Early in 1958, I left high school to enlist in the U.S. Marine Corps. I was sent to Parris Island, S.C. for training. At boot camp I earned an expert rifleman's badge. From Parris Island I was transferred to an infantry battalion at Camp Lejeune, N. C.

While in the Marine Corps, I kept in touch with Commander Rockwell by mail, and in the fall of 1958, I joined the Party. At this time, the Commander was practically all alone in his struggle.

On my way to New York City on leave, I had a stop-over at Washington. This gave me a chance to visit the Commander. When I got to his house on Williamsburg Blvd., the lights were out and most of the windows were busted. The electricity had been turned off because of unpaid bills and there was no food in the whole building. With the exception of two young men, Commander Rockwell was all alone. (He had sent his wife and children away for their own protection.)

I had saved \$40 for my furlough. When I saw how bad off the Commander was, I reached into my pocket and pulled out half of it--\$20--and handed it to him.

The Commander gratefully accepted the money and without any further word, he raced out the door straight for the grocery store. I'll never forget the sight when he returned with a big bag of groceries in one hand and a hunk of bread he was munching on in the other. Before I left for New York, we all gathered in a room in the darkened house. By the candle light, before the Swastika banner, the four of us sang the Party battle song.

My last tour of duty was with the Military Police at Quantico, Virginia in 1960. This placed me only 30 miles from Party headquarters in Arlington. While stationed in Quantico, I married my 19-year-old girl friend, Erika, whom I had been going with for two years. Also, while stationed at Quantico, I had my name legally changed.

This marriage ended in divorce four years later. A second marriage ended in separation. Marriage, I discovered, is a full time proposition, and so is being a soldier fighting in a real war for the survival of our people. Marriage and revolutionary warfare are incompatible except under the rarest and most unusual circumstances. To me, as an idealist, nothing is more important than fighting in the struggle to destroy the enemies of the White Family of People. I found it impossible and futile to settle down to the normal things in life while the commies and niggers are actively working to destroy everything I love and cherish. You cannot succeed at marriage as a part-time husband nor win a war as a part-time soldier. For me, it was one or the other.

All the sacrifices we make today, although deprived of a normal life and happiness, will have been well worth it a thousand times over when we finally win.

Early in the spring of 1960, Commander Rockwell began a strong drive for public recognition for the movement by staging weekly rallies on the Mall in D. C. across from the FBI building.

I attended the very first rally and most of the other rallies on my off-duty hours. I regularly stood on the platform with the Commander as he spoke. During one of the rallies in June of 1960, the military police got wind of my participation and they came and arrested me.

The papers played the story big. President Johnson, then a U.S. Senator, called for an investigation and demanded to know why an American Nazi was permitted to serve in the U.S. Marine Corps. Enormous pressure was exerted by the Jew War Veterans and I once again found myself in the middle of a battle on account of my political beliefs.

There followed three attempts to have me ousted from the Marines.

At Quantico, I was informed by my Commanding Officer that I would have to appear before an undesirable discharge board because I failed

to list my 1956 arrest for "criminal libel" when I enlisted.

I refused to acknowledge the board and demanded a "General Court Martial" as suggested by retired General Pedro del Valle who was advising me through Commander Rockwell. The "undesirable discharge" attempt failed.

Next, I was taken to Bethesda Naval Hospital--the same place Sen. Joe McCarthy died, to undergo "psychiatric observation".

At Bethesda I was interviewed by a Captain Jay Wilson, Chief of the Psychiatric Section. Dr. Wilson submitted a report that was extremely favorable in my behalf.

When the attempt to have me diagnosed as some kind of a nut had failed, the Marine Corps, under pressure, resorted to fraud!

On the morning of July 6, 1960 I was called in from my post to appear before my Company Commander, Captain Young. He showed me an HONORABLE discharge with my name typed on it and asked me if this is what I wanted, and if I did, would I sign for it?

I had made it clear that I wanted to stay in the Marine Corps, but that if they wanted me out, I would settle for nothing less than an Honorable Discharge. I signed for the Honorable Discharge--being careful to note that the release papers I signed (DD Form 214) listed my discharge as "Honorable" in the space where "type of discharge" was listed.

I was then hustled through the required medical checkup for release from duty in an unprecedented one hour and ten minutes! (It normally takes TWO days!)

After my "medical checkup", I returned to Captain Young's office for my Honorable Discharge and instead was handed a "General" Discharge, under "Honorable Conditions", which is one step below a full Honorable!

I looked at the DD Form 214 I had signed for an Honorable Discharge and I discovered that the form had been re-inserted in a typewriter and the words "Under" and "Condi-

tions" had been typed in before and after the word "Honorable" in the space allotted for type of discharge, so that it now read: "Under Honorable Conditions"--instead of "Honorable" for which I signed. The Honorable Discharge first shown to me was used as BAIT to procure my signature. It was a fraudulent discharge.

Everything had been neatly planned by the opposition. The next thing I knew, two military policemen came into the office and I was taken off the base and deposited on the highway. On that highway I stood near a replica of the statue showing Marines raising the flag on Mount Surabachi...I was shocked and dumbfounded; it just didn't seem real.

Back in civilian life, I went to work for the Party full time. Every weekend, without fail, we held a Nazi rally in the nation's capital.

During one of the rallies at Judiciary Square on 5th & E Street (we alternated between the Mall and the Square), Commander Rockwell sent me ahead with instructions to begin speaking until he arrived!

I had never before spoken in public! I was nervous and shaky when I stood in the middle of that little square to speak.

Continued on next page

Next Issue:



The life story of
Lt. Allen Vincent
San Francisco Nazi Leader

At first I was hesitant and spoke haltingly, but then I began to warm up. Words came to me almost naturally and in a great flow, vocally expressing what I had heretofore only felt in my heart. My voice thundered in that little square and everyone began to look my way and listen!

When I finished, my comrades cheered and Commander Rockwell, who had arrived during the middle of my speech, rushed up and wildly shook my hand. From that day on, I shared the speaker's podium with the Commander.

The most outstanding event I recall from back in those early years was the great Boston riot.

The Commander and I and four other troopers marched into a crowd of ten thousand screaming Jews to picket the pro-Zionist movie "Exodus".

The Jews tried to kill us. Out in the middle of that enormous crowd of hostile Jews, I thought my last day on earth had arrived. Another event was the famous "Hate Bus" ride through the South. I was placed in command of this mission. When we reached New Orleans, we were all arrested and jailed. We went on a six day hunger strike to bring attention to our plight. Later, on an appeal to a higher court, the charges were dismissed.

The environmentalists and Jew-oriented psychiatrists will no doubt attribute my political activity and

extremist beliefs to my "unfortunate" childhood experiences. But, my brother, who experienced the exact environment as I did, and who underwent the same hardships, lives an opposite life than mine. He is today a happily married man, a peaceful non-political citizen and the owner of a small business he built up himself.

Dedicated, fanatical idealists are born, not made. They are nature's antidote to the poisonous perversions of her eternal laws.

SOME FURTHER NOTES OF INTEREST:

John Patler, who is in charge of the Party printing facility at the Spotsylvania Camp is a non-drinker and non-smoker, has brown hair and brown eyes, and stands 5' 8".

Practically all of the art-work (cartooning, designing, lay-outs, etc.) of Party literature is the work of Capt. Patler.

Ex: One of the most popular items printed by the Party is the world-famous "Boat Ticket" which was designed and illustrated by Capt. Patler and Commander Rockwell who wrote the copy.

Also, many of the most successful and dramatic events staged by the Party were planned and coordinated by Capt. Patler.

This is the first time we have ever presented more than a brief biographical outline of a Party Officer as is standard procedure in the "Know Your Officers" section of Stormtrooper Magazine.

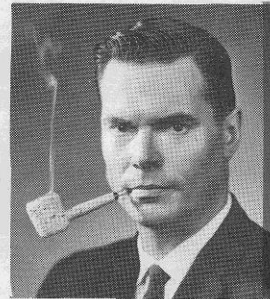
Yet, in spite of the length of the above autobiography, much of the full story, including personal views and opinions of the subject, have been omitted owing to a lack of real space. (A whole book can be written on the life of every man serving the cause.)

If you like the idea of enlarging on each officer's life, as we have attempted to do with Captain Patler, we will continue this procedure in future issues, even returning to those officers whose biographical sketches have appeared in previous issues to repeat and enlarge upon their stories in greater detail. Let us know. Stormtrooper Magazine, Box 215, Rt. 3, Spotsylvania, Va. 22553

Appendix 3

“Assassin Misses Commander”
(*Rockwell Report*, July 1967, pp. 1-3)

the Rockwell Report



George Lincoln Rockwell-July, 1967

ASSASSIN MISSES COMMANDER

White People! Unite & Fight!



Official Publication of the American Nazi Party

THE ROCKWELL REPORT is published monthly by the National Socialist White People's Party. Write Box 22071, Dallas, Texas 75222, U.S.A. Single copy, \$1.00. One year, mailed in an unmarked envelope, \$10.00; Air Mail \$11.00.

ASSASSIN MISSES COMMANDER

Over the past eight years, I have been attacked regularly in various ways, from gasoline bombs to gunfire.

But most of the attacks have been very poorly planned and hastily executed, causing little damage. The most common form of attack has been from a speeding car, which would whizz by while the brave warriors inside hurled flaming gasoline or fired their guns.

Last week, however, the enemy made an attack on me personally which came mighty close to success.

I had been driving in Alexandria, something I very rarely do, since I cannot afford to lay myself open to the usual traffic tickets, etc. But somebody KNEW I was out and that I was driving. So they laid an ambush for me.

When I returned to the driveway which enters our 23-acre reservation in Arlington, I found a small roadblock in front of me.

Figuring it was more of the harrassment of the juveniles around here who get a kick out of daring the wrath of the Nazis by such childish exploits, I asked the young university student who was with me to get out and remove the road-block while I waited in the driver's seat.

All around the entrance to our drive-way is heavily wooded, with a lot of undergrowth and bushes. Right behind and to my left was a brick pillar. And behind this pillar, about ten feet behind and to the left of where I was sitting in the car, lurked a cowardly assassin with a 38 calibre pistol.

I sat there, -a perfect pigeon for a clean shot, for about a minute, when suddenly it seemed the whole world exploded in my ear. I thought it was a bomb at first.

Instinctively, I jumped out of the car and dove at the place where it came from, -which prob-

ably saved my life and deprived them of a second shot. I saw two figures scrambling away through the woods, and took off after them.

Since they had about twenty yards head start, I jumped out of the woods and onto the sidewalk which runs along the same way they would have to escape, hoping to outflank them. I sent the thoroughly shaken kid who had been with me up the hill for help, and ran as I never have before, raging at the top of my lungs how I would kill the #\$\$%&* so-and-sos when I got my hands on them. I reached a little dirt road on the other side of the woods, which they would have to cross, ahead of them, -and just in time to see one of them, a man with dark hair, heavy-set, wearing a faded yellow sweat-shirt, dive into a culvert and race away. I took off after him, but cooled off, since they were armed, and I was not, and decided there was not much to gain by further running through the woods. Anger gave my heels wings, but fear gave theirs jet propulsion. The cops, who later checked the tracks in the woods, said they were touching the ground only every ten feet or so.

When I got back to the barracks and inspected the car, we found where a 38 slug had hit and carromed off the door about an inch and a half from where my head was.

The ballistics people who came over later told me they thought the assassin had fired from the crouched position, rather than sighting, and thus went slightly up and to the left, which they said is usual when shooting in that fashion.

Once again, I think Destiny, -and my reputation, -saved me from what would have been sure death. With a full minute to aim from less than fifteen feet away, it is a miracle the villain could have missed, and I personally believe that my arrogance in the face of this kind of cowardly attack, plus the fact that I was out and after him as soon as he fired, is what keeps me alive.

A final note which should be mentioned is the way the press handled the incident.

Surely such an attack and near assassination was news.

When they missed General Walker, the whole world was in an uproar.

Yet the local papers either did not mention it at all, or treated it as some kind of cheap propaganda trick I had played, although the police

confirmed every bit of it.

I cannot help wondering what those who claim I am an agent provocateur would say to explain this sort of thing. I can only wish I could have Mr. Hoggis, or Bloomers Buckley, or Rabbit Welch with me during some of these attacks, when my supposed comrades are "paying" me in lead or gasoline.



Appendix 4

Miscellaneous Search Warrants Issued
August/September 1967

COMMONWEALTH OF VIRGINIA
County of Arlington

SEARCH WARRANT

Executed the within search warrant this 8:25 PM 26th
day of AUGUST, 19 67

by delivering a true copy thereof to

MRS. ALICE PATLER &
MR SAM ERWIN
in charge of or legal custodian of:

3 LETTERS BETWEEN
GEORGE LINCOLN ROCKWELL
& 2522 LEE HWY

and seizing the following property:

3 LETTERS BETWEEN
GEORGE L ROCKWELL & MR
PATLER
ONE BULLET CASING
MARKED FNT 1952
S E Cuckenberg
(OFFICER AND BADGE NO.)

L M

LAWYER E. B. POPE

In the County Court of Arlington County, Virginia

To the Sheriff or any Police Officer of said County:

WHEREAS an affidavit has been filed with me pursuant to law and complaint made before me by

Det. S. E. CRICKENBERGER A.C.P.D. that

HE HAS INFORMATION FROM A RELIABLE SOURCE AND
AFTER AN INVESTIGATION HE IS OF THE OPINION THAT
AMMUNITION USED IN A 38 CAL. MOUSER MARKED FNX AND A NA
BALL CAP PISTOL USED IN THE MURDER OF GEO. LINCOLN ROCK
IS BEING STORED IN PREMISES 2522 LEE HWY. ALSO PLANS OR DRAWINGS
OTHER INFORMATION PERTAINING TO THE ABOVE CRIME,
and it appearing that there is reasonable and probable cause for such belief;

THESE are therefore to authorize and require you, in the name of THE COMMONWEALTH OF VIRGINIA,

to enter in the day or night time the house, place, vehicle, or thing described as follows:

DWELLING LOCATED AT 2522 LEE HWY.,
ARLINGTON, VIRGINIA,

and there diligently search for the said goods and bring the same and the person or persons in whose possession the same are found, before the Judge of the County Court to be disposed of or dealt with according to law.

GIVEN UNDER MY HAND AND SEAL this 26 day of Aug 1962.

E. L. J. J. Jr.
Judge - Special Justice

COMMONWEALTH OF VIRGINIA

us. { AFFIDAVIT
FOR
SEARCH WARRANT

SAM ERVIN

Stonewall District,

issued Sept. 16, 1967

A-105-A

COMMONWEALTH OF VIRGINIA

us. { SEARCH WARRANT

SAM ERVIN

Stonewall District,

issued Sept. 16, 1967

I, Martin M. Folks, Clerk of the
Circuit Court of Highland County
do certify that the within is a true
copy an Affidavit for a Search Warrant
and Search Warrant as deposited for file
in my said office by the County Court of
the County of Highland.
Given under my hand this 18th day of
September, 1967.

Martin M. Folks, Clerk.

warrant executed in the County of Highland
day of Sept., 1967, by searching the within
as and seizing the following: 3 empty cartridges
Aug

Inv. G. L. Bradley
Sheriff—Police—Pro. Inspr.

this day 16th of September, 1967 personally appeared before me,
Judge of the County Court Sam Ervin of said County, and made oath that he verily believes that a
certain empty cartridge cases and slugs from a Mauser 7.63 cal pistol

are located on the Sam Ervin property located in Stonewall District
Magisterial District, Highland County, Virginia, the said articles being located
within the curtilage of a 2-st-frame dwelling, and within pasture
land surrounding the said dwelling

~~and described in the~~

and occupied by or in possession of Sam Ervin unlawfully
contains, contrary to law,

because the said empty cartridges and slugs may be from a pistol used in the murder of
George Lincoln Rockwell, of Arlington, Virginia

and further made oath that such information was received through a reliable person, or that he has
reasonable cause for such belief.

Given under my hand, this 16th day of September, 1967

Seybert Beverage

~~Clk.~~
Judge. [SEAL]
~~XXXX~~

SEARCH WARRANT

State of Virginia,

County of HIGHLAND

to-wit:

To the Sheriff or any Police Officer of said County:

WHEREAS C. L. Bradley, State Police Investigator

has this day made oath before me that he verily
believes that a certain (empty cartridge cases and slugs from a Mauser 7.63 cal.
pistol) are on the Sam Ervin property on the west side of State Highway
Route No. 678

located in Stonewall District of said County at or near Williamsville, Va.
the said empty cases and slugs may be from a pistol used in the murder of George Lincoln
Rockwell, the said evidence ~~and described in the~~ being on the curtilage of property owned

and occupied by or in possession of Sam Ervin and cases unlawfully contains, contrary
to law, the said empty cartridge and slugs, all of said evidence bein on the curtilage
of the said dwelling and not within the said dwelling

and that such information was received through a reliable person, or that he has reasonable cause for
such belief.

THESE ARE, THEREFORE, In the name of the Commonwealth, to command you forthwith in the day or
night to enter the said premises above described and there diligently search for the said empty
cartridge cases and slugs

and if the same, or any part thereof, be found upon
such search to bring the same, and the person, or persons, in whose possession same are found, before the
County Court of said County to be disposed of or dealt with according to law. And this you shall in no
wise omit.

Given under my hand and seal, this 16th day of September, 1967

Appendix 5

Psychiatric Examination of John Patler
by Dr. John R. McGreevy
August 1967

DEPARTMENT OF MENTAL HYGIENE AND HOSPITALS
PART II
INTERROGATORY AND HISTORY AND PHYSICIANS EXAMINATION
FOR CRIMINAL CASES

As required Under Section 19.1-228 of the Code of Virginia of 1950 as amended.

Prepare only one copy and submit with Court Order to the hospital to which person is committed.

Name of Hospital to which patient is being committed		Address	
Name of Patient	John	nmn	Patler
	Full First Name	Full Middle Name	Full Last Name
Address			
Street or Rural Number	City or Town	County or City Residence	
Place of Commitment			
Nearest Relative or Correspondent:			
		Name	
		Address	Relationship to Patient
FILL IN THE FOLLOWING PERSONAL INFORMATION ON PATIENT:			
Birth Date	1/6/139	Birth Place	NY, NY
Marital Status: Single ☐ Married ☒ Widowed ☐ Divorced ☐ Separated ☐ Unknown ☐			
Religion: Protestant ☐ Catholic ☐ Jewish ☐ Other ☒ Unknown ☐			
Alcoholic Habits: Abstinent ☒ Temperate ☐ Intemperate ☐ Unknown ☐			
Drug Habits: State Briefly <u>none reported</u>			
Previous Psychiatric Care:			
Psychiatric Institution Facilities		<u>Mannassas Hosp. - Baltimore NY</u>	
		Name and Address	
<u>one month</u>			
Dates of latest admission or discharge (State which)			
Psychiatric Outpatient Clinic		<u>Mannassas Hosp. - NY</u>	
		Name	
Address		1958	
		Date of Service	
Institution for the Mentally Deficient			
		Name	
Address		Date of latest admission or discharge	
Private Psychiatrist		<u>Dr. Cusack</u>	
		Name	
		Address	
		Date of Service	

TYPE OR PRINT ALL INFORMATION, except where signatures are required.

DMH 1031 (3-67)

Approved by the State Hospital Board.

State briefly any physical disease present or recent illness or injury: _____

Is patient on medication? Yes _____ No ☒ If yes, What _____

If hospitalized, where _____

New York
None

Bellevue as teenager
Address

MENTAL INFORMATION:

State briefly mental symptoms of patient Possible diagnosis of sociopathic
character disturbance - desocial type might have
been made on basis of his behavior in his youth
perhaps.

When first observed _____

How rapid development _____

Has patient attempted suicide: Yes _____ No ☒ If yes, Explain _____

Has patient attempted homicide: Yes _____ No ☒ denied
If yes, Explain _____

If mentally deficient, if psychological testing information available, give intellectual level _____

Determined by _____

Name

Address

Is there present convulsive disorder? Yes _____ No ☒ If yes, Explain (including medication) _____

INFORMATION RELATIVE TO CRIME:

Has patient been charged or indicted for crime, past or present? Yes _____ No _____ If yes, Explain _____

Is patient under criminal charges at present? Yes ☒ No _____ If yes, what charge _____

SPECIAL INFORMATION REGARDING INEBRIATES OR DRUG ADDICTS:

Inebriacy:

Is this patient an alcoholic? Yes _____ No ☒ If Yes, give reasons for your opinion _____

Drug Addiction:

If patient is a drug addict, what drugs are used and amount _____

Other information regarding the use of drugs, describe briefly _____

CERTIFICATE OF WITNESSES

We, the undersigned witnesses, summoned before this hearing hereby certify that the testimony given by us under oath is true and correct to the best of our knowledge and belief.

Signature of Witnesses

Relationship to patient (if public
Official, title) and address, PRINTED

_____ Name (Seal)	Relationship	Address
_____ Name (Seal)	Relationship	Address
_____ Name (Seal)	Relationship	Address

~~It is necessary~~ THIS MUST BE SIGNED: We, the undersigned physicians of the commission in this hearing, after personal examination, believe the aforementioned person is in such mental condition that his confinement in a hospital for the insane *not necessary* is necessary for proper care and observation.

Signature

TYPE OR PRINT NAME AND ADDRESS

<i>John R. M. Greeny MD</i> Doctor of Medicine (Seal)	_____ Name
_____ Doctor of Medicine (Seal)	_____ Address
_____ *Clinical Psychologist (Seal)	_____ Name
	_____ Address

Subscribed and sworn before me this _____ day of _____ 19 _____

Judge or Justice

Type
or
Print

Name _____
Title _____
Address _____

*Used only in case patient being examined is a mentally deficient within the meaning of the law.

Appendix 6

Psychiatric Examination of John Patler
by Dr. Wilbur A. Hamman
August 1967

Approved by the State Hospital Board.

State briefly any physical disease present or recent illness or injury: None

Is patient on medication? Yes ☐ No ☒ If yes, What _____

If hospitalized, where NO

Name

Address

MENTAL INFORMATION:

State briefly mental symptoms of patient None

When first observed _____ How rapid development _____

Has patient attempted suicide: Yes ☐ No ☒ If yes, Explain _____

Has patient attempted homicide: Yes ☐ No ☒ If yes, Explain in charge

will be removed

If mentally deficient, if psychological testing information available, give intellectual level NO

Determined by _____

Name

Address

Is there present convulsive disorder? Yes ☐ No ☒ If yes, Explain (including medication) _____

INFORMATION RELATIVE TO CRIME:

Has patient been charged or indicted for crime, past or present? Yes ☐ No ☒ If yes, Explain _____

Currently charged & removed

Is patient under criminal charges at present? Yes ☒ No ☐ If yes, what charge same

SPECIAL INFORMATION REGARDING INEBRIATES OR DRUG ADDICTS:

Inebriacy:

Is this patient an alcoholic? Yes ☐ No ☐ If Yes, give reasons for your opinion _____

Drug Addiction:

If patient is a drug addict, what drugs are used and amount _____

Other information regarding the use of drugs, describe briefly _____

CERTIFICATE OF WITNESSES

We, the undersigned witnesses, summoned before this hearing hereby certify that the testimony given by us under oath is true and correct to the best of our knowledge and belief.

Signature of Witnesses

Relationship to patient (if public
Official, title) and address, PRINTED

Name (Seal)

Relationship

Address

Name (Seal)

Relationship

Address

Name (Seal)

Relationship

Address

THIS MUST BE SIGNED: We, the undersigned physicians of the commission in this hearing, after personal examination, believe the aforementioned person is in such mental condition that his confinement in a hospital for the insane is necessary for proper care and observation.

Signature

Doctor of Medicine

(Seal)

Used in case of hospitalization
TYPE OR PRINT NAME AND ADDRESS

T. 1004 Arlington Towers
Arlington, Va
Name
Address

Doctor of Medicine

(Seal)

Name

Address

*Clinical Psychologist

(Seal)

Name

Address

Subscribed and sworn before me this _____ day of _____ 19 _____

Judge or Justice

Type
or
Print

Name _____

Title _____

Address

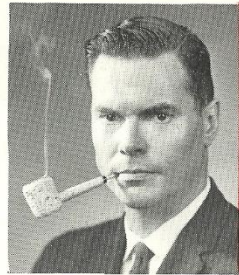
*Used only in case patient being examined is a mentally deficient within the meaning of the law.

Image Gallery



June 6, 1965 – American Nazi Party Commander George Lincoln Rockwell stands in front of the Victorian-style home at 6150 Wilson Boulevard (Arlington, VA) that serves as a combination Headquarters and barracks.

the Rockwell Report



George Lincoln Rockwell-July, 1967

ASSASSIN MISSES COMMANDER

White People! Unite & Fight!



Official Publication of the American Nazi Party

THE ROCKWELL REPORT is published monthly by the National Socialist White People's Party. Write Box 22071, Dallas, Texas 75222, U.S.A. Single copy, \$ 1.00. One year, mailed in an unmarked envelope, \$ 10.00; Air Mail \$ 11.00.

#90

In late June 1967, the first attempt was made on Rockwell's life as detailed in the July issue of the party publication *The Rockwell Report*.

ASSASSIN MISSES COMMANDER

Over the past eight years, I have been attacked regularly in various ways, from gasoline bombs to gunfire.

But most of the attacks have been very poorly planned and hastily executed, causing little damage. The most common form of attack has been from a speeding car, which would whizz by while the brave warriors inside hurled flaming gasoline or fired their guns.

Last week, however, the enemy made an attack on me personally which came mighty close to success.

I had been driving in Alexandria, something I very rarely do, since I cannot afford to lay myself open to the usual traffic tickets, etc. But somebody KNEW I was out and that I was driving. So they laid an ambush for me.

When I returned to the driveway which enters our 23-acre reservation in Arlington, I found a small roadblock in front of me.

Figuring it was more of the harrassment of the juveniles around here who get a kick out of daring the wrath of the Nazis by such childish exploits, I asked the young university student who was with me to get out and remove the road-block while I waited in the driver's seat.

All around the entrance to our drive-way is heavily wooded, with a lot of undergrowth and bushes. Right behind and to my left was a brick pillar. And behind this pillar, about ten feet behind and to the left of where I was sitting in the car, lurked a cowardly assassin with a 38 calibre pistol.

I sat there, -a perfect pigeon for a clean shot, for about a minute, when suddenly it seemed the whole world exploded in my ear. I thought it was a bomb at first.

Instinctively, I jumped out of the car and dove at the place where it came from, -which prob-

ably saved my life and deprived them of a second shot. I saw two figures scrambling away through the woods, and took off after them.

Since they had about twenty yards head start, I jumped out of the woods and onto the sidewalk which runs along the same way they would have to escape, hoping to outflank them. I sent the thoroughly shaken kid who had been with me up the hill for help, and ran as I never have before, raging at the top of my lungs how I would kill the #\$\$%&(\$*& so-and-sos when I got my hands on them. I reached a little dirt road on the other side of the woods, which they would have to cross, ahead of them, -and just in time to see one of them, a man with dark hair, heavy-set, wearing a faded yellow sweat-shirt, dive into a culvert and race away. I took off after him, but cooled off, since they were armed, and I was not, and decided there was not much to gain by further running through the woods. Anger gave my heels wings, but fear gave theirs jet propulsion. The cops, who later checked the tracks in the woods, said they were touching the ground only every ten feet or so.

When I got back to the barracks and inspected the car, we found where a 38 slug had hit and carromed off the door about an inch and a half from where my head was.

The ballistics people who came over later told me they thought the assassin had fired from the crouched position, rather than sighting, and thus went slightly up and to the left, which they said is usual when shooting in that fashion.

Once again, I think Destiny, -and my reputation, -saved me from what would have been sure death. With a full minute to aim from less than fifteen feet away, it is a miracle the villain could have missed, and I personally believe that my arrogance in the face of this kind of cowardly attack, plus the fact that I was out and after him as soon as he fired, is what keeps me alive.

A final note which should be mentioned is the way the press handled the incident.

103

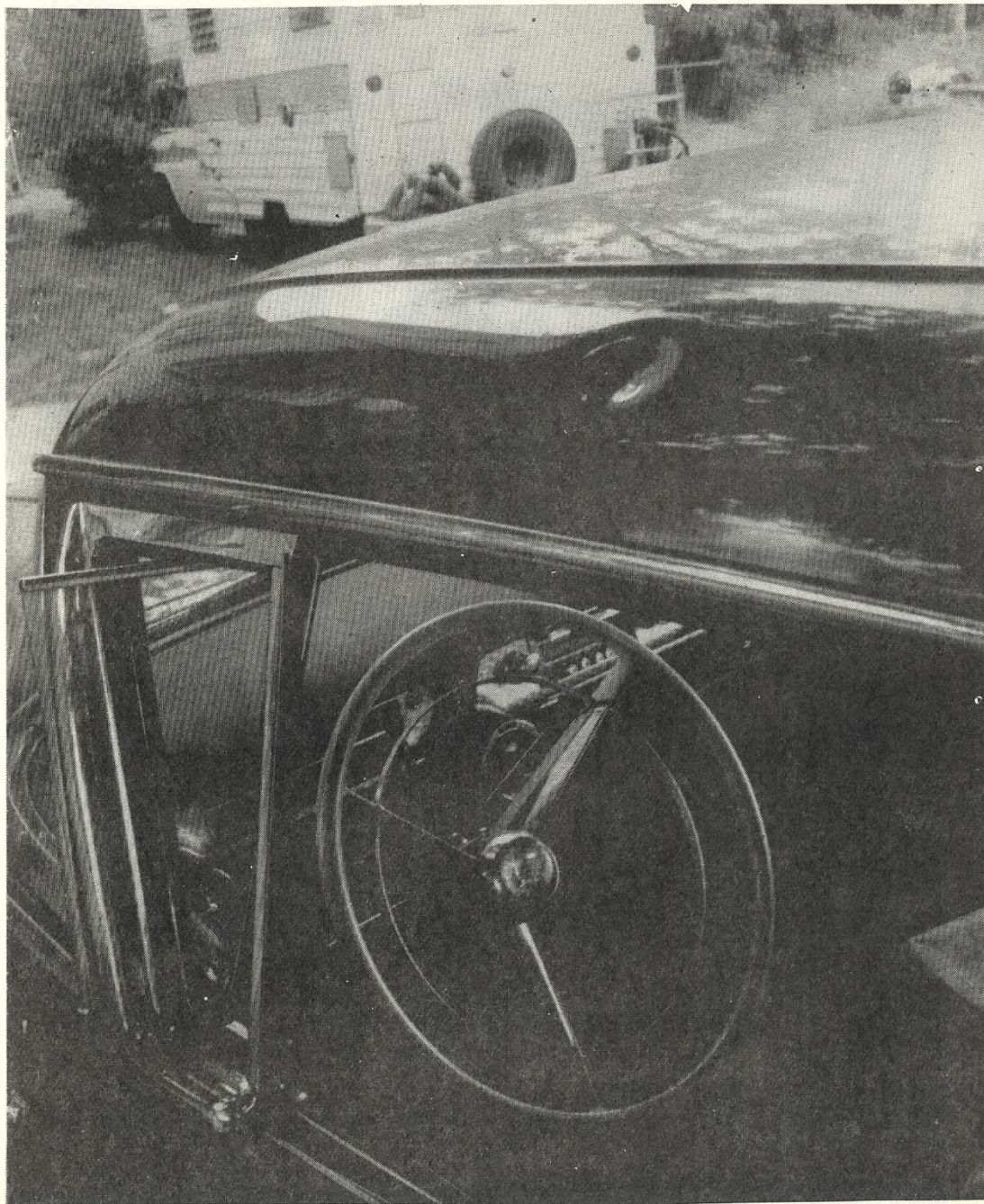
Surely such an attack and near assassination was news.

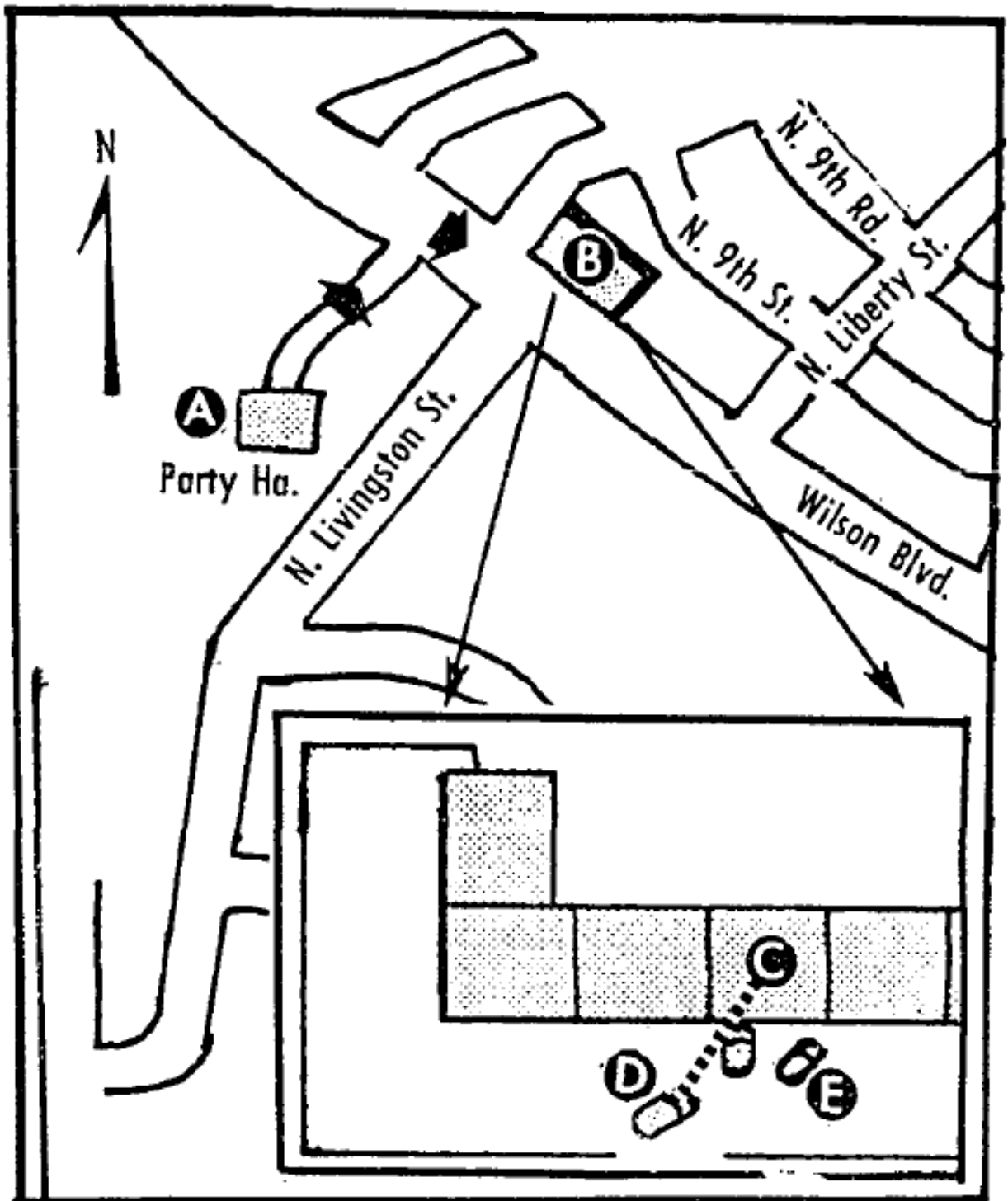
When they missed General Walker, the whole world was in an uproar.

Yet the local papers either did not mention it at all, or treated it as some kind of cheap propaganda trick I had played, although the police

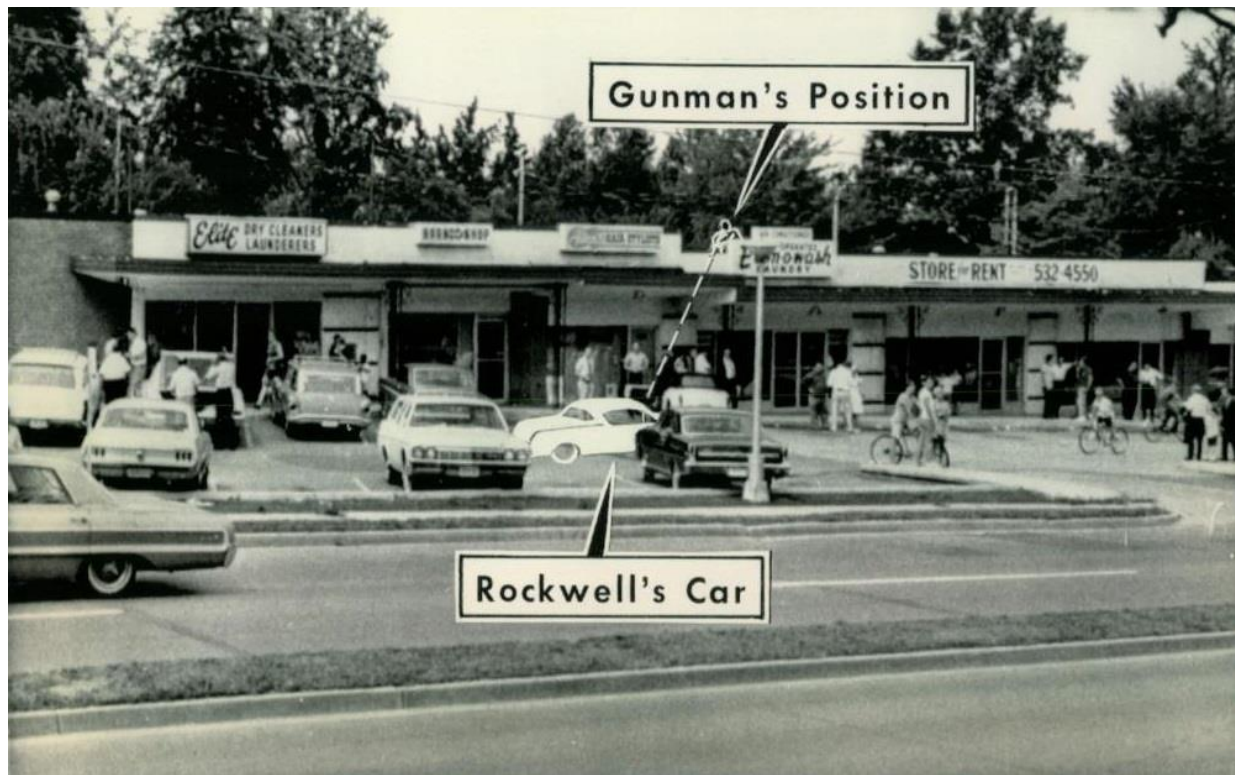
confirmed every bit of it.

I cannot help wondering what those who claim I am an agent provocateur would say to explain this sort of thing. I can only wish I could have Mr. Hoggis, or Bloomers Buckley, or Rabbit Welch with me during some of these attacks, when my supposed comrades are "paying" me in lead or gasoline.





August 25, 1967 – Rockwell’s fateful route from ANP headquarters to the Dominion Hills Shopping Center, a short distance away down Wilson Boulevard.



Artist's conception showing the moment Rockwell was killed by an unknown assailant.



The view from the gunman's perch atop the shopping center roof.



Rockwell lying as he fell in the parking lot.
Unknown persons placed items near his body for dramatic effect.





Rockwell's body is covered by the medical examiner.



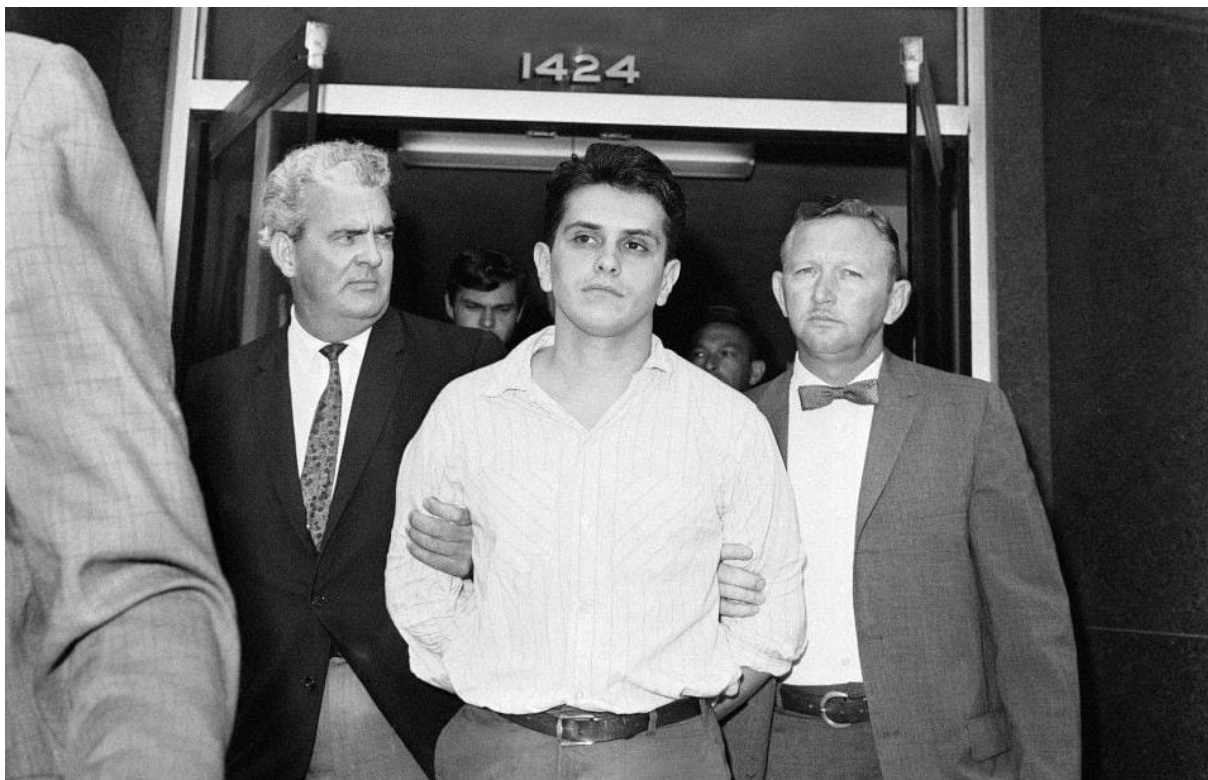
A clear view of the two bullet holes in the windshield.



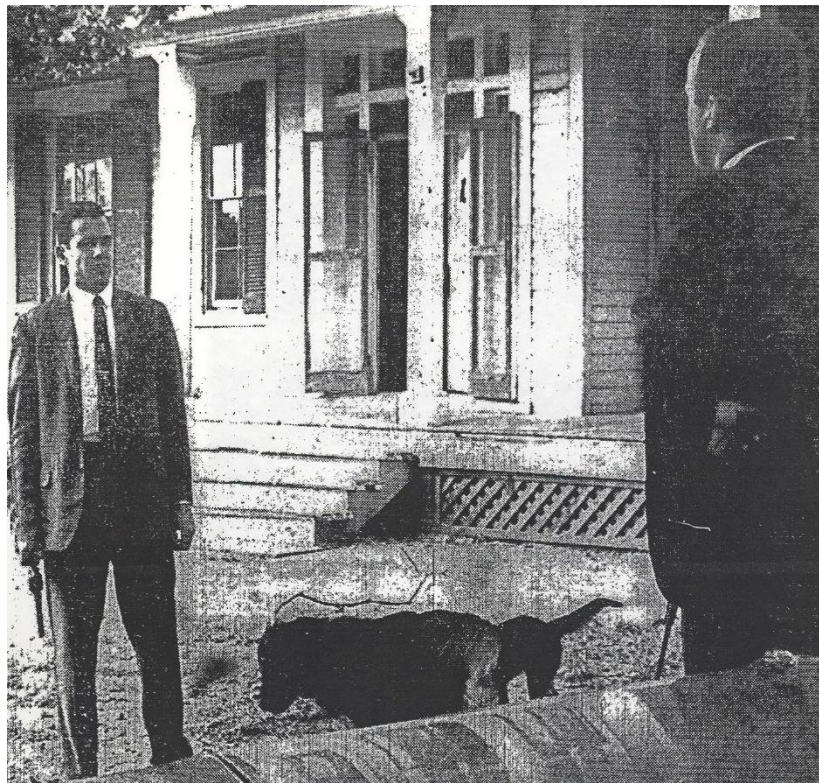
The scene inside Rockwell's car with his trademark corn cob pipe resting on the car seat.



Curious locals and the press flooded the parking lot as Rockwell's car was towed away.



John Patler was in police custody later that same afternoon.



ANP Deputy Commander Matt Koehl, with gun in hand, confronted an unwelcome reporter in front of the party headquarters that afternoon.



August 26, 1967 – The next day a police search of the neighborhood around the shopping center found the suspected murder weapon.



August 26, 1967 – Matt Koehl invited the press into ANP headquarters to announce that he was assuming control of the organization.



August 29, 1967 – An early morning caravan of ANP supporters left headquarters headed for Rockwell's burial ceremony at Culpeper National Cemetery.



A U.S. Army helicopter departed Rockwell gravesite having dropped off military police rushed there to enforce burial protocols (no Nazi emblems allowed).



Nazis arrived at cemetery entrance with prohibited regalia and floral tributes.





A standoff resulted outside the cemetery gates as the swastika-bedecked funeral party was blocked by U.S. Army MPs.



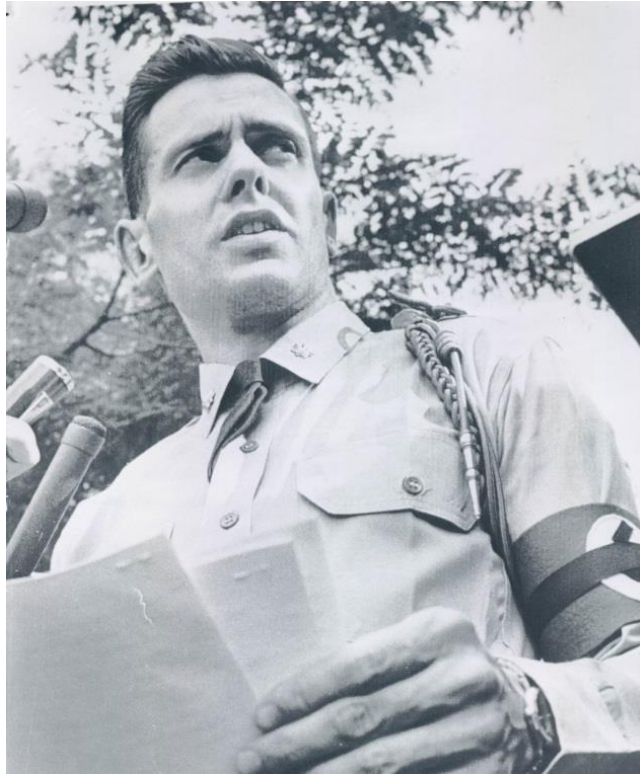
A fracas ensued as several Nazis tried to force the issue. The cemetery was declared closed.



Having been turned away, Rockwell's hearse inched its way through the Culpeper crowd at the start of its journey back to Arlington.



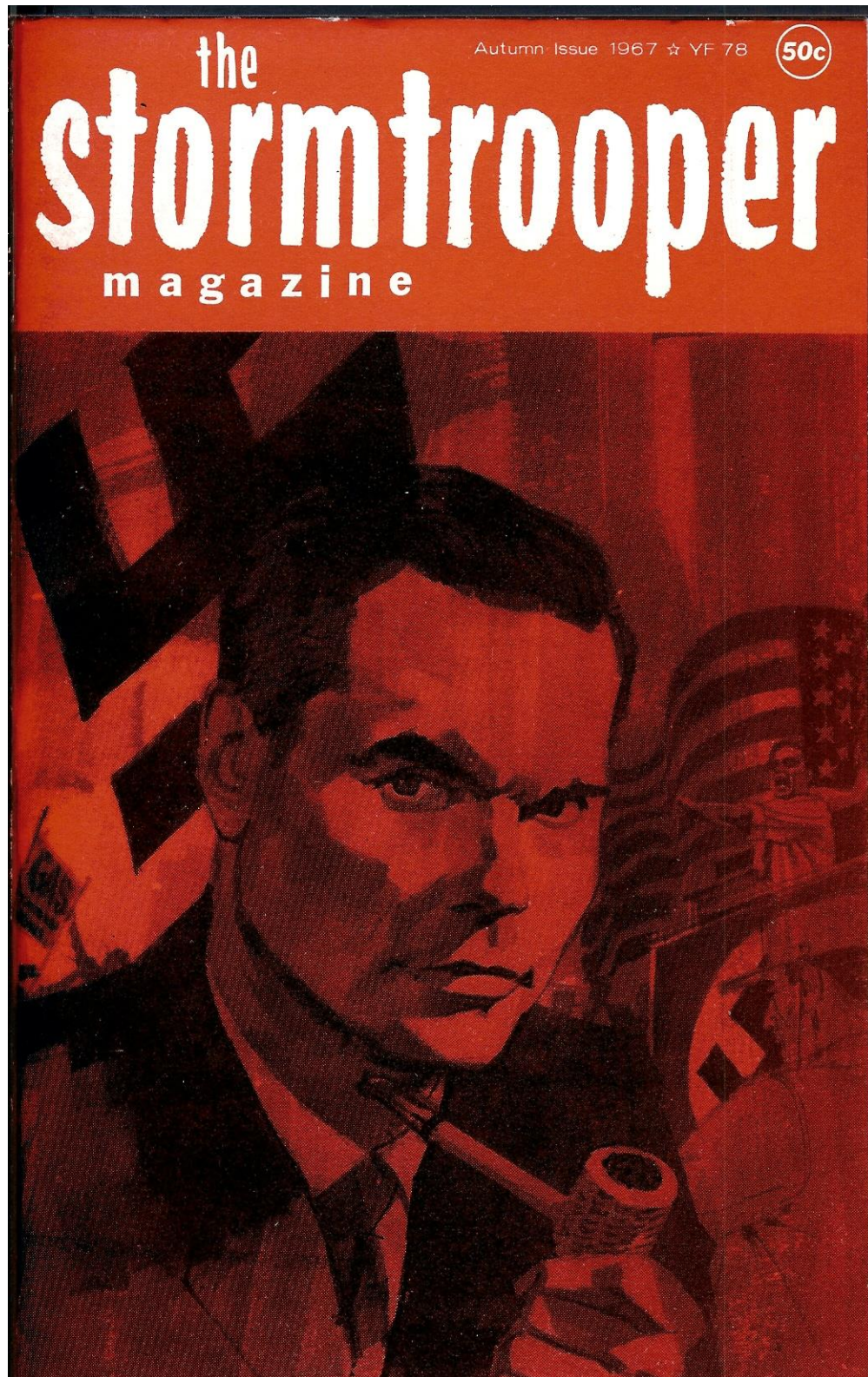
Rockwell's body returned to the Arlington funeral home where it started the day.



August 30, 1967 – ANP Commander Matt Koehl announced that Rockwell had been cremated. His ashes were returned to party headquarters where a private ceremony was held.



An armed guard was posted to discourage unwanted visitors.



Autumn 1967 – The Nazi's account of the burial fiasco.

N.S. Confront Federal Troops



Following the assassination of Commander Rockwell, the Party attempted to secure a burial site at Arlington National Cemetery. The Commander was a veteran of nearly 20 years' service in the U. S. Navy, had led three fighter squadrons and had earned nine decorations.

However, Party officials were told by the Defense Department that new regulations made the Commander ineligible for burial at Arlington. An alternate gravesite was chosen at the military cemetery in Culpeper, Va.

During conversations with the Pentagon, National Headquarters emphasized repeatedly that National Socialist funeral rites would be accorded the Commander. At the time, the Pentagon voiced no objections.

However, that was before Jewish pressure groups swung into action. As the press was announcing that the funeral services would include an honor guard of Stormtroopers, and National Socialist ceremonies, Party Headquarters received late word that no swastikas would be permitted inside the cemetery.

The decision was made to proceed as planned. The following morning a cortege of 60 cars left Arlington for the quiet town of Culpeper. At the same time, a cordon

of armed troops was set-up around the cemetery to block the mourners.

The cortege was met at the gates of the cemetery by Major General Turner, who was flanked by MP bodyguards. Turner growled that no swastikas would be permitted beyond the gates of Culpeper. National Leader Matt Koehl replied that the National Socialist mourners were within their legal rights. He also stated that the Party insignia would not be removed under any circumstances.



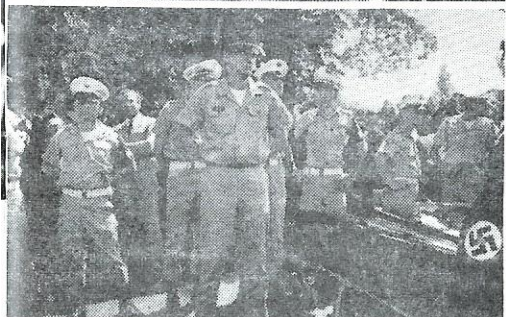
Thus began a day-long confrontation during which the bantam brass-hat constantly scurried to telephones to consult with the Pentagon wire-pullers.

At one point, Captain Chris Vidnjevich of the Party's Chicago headquarters jumped on the roof of the hearse and exhorted the assembled mourners to break through the line of troops. He then hurled himself into the assembled MP's, only to be arrested. Trooper Mike Steward was also arrested as he attempted to force himself into the cemetery, and was brutally manhandled by hulking MP's as he was dragged away.



Pvt. James G. DeWitt was also arrested on "suspicion" of participating in a public demonstration while in uniform, and also "suspicion" of being AWOL. The charges stemmed from the fact that he had the temerity to mourn his fallen Commander. The AWOL charges were later dismissed, although it took the Army a full week to determine if DeWitt had been AWOL.





Late that afternoon, the Army informed National Leader Koehl that permission for the Commander's burial had been withdrawn, and that the Party would have to make a new application.



The cortege returned to Arlington, where Party officers gathered for further talks. Efforts to obtain a burial plot in private cemeteries were unsuccessful. By this time, the agents of Jewry had been busily at work.

SPOTSYLVANIA SITE

In Spotsylvania County, Virginia, there survives the rugged pioneer stock that made this country great. The people there still do things in the "old ways"; this includes taming local Blacks, as well as burying loved ones nearby on family property.

The Party owns a five-acre tract of land in Spotsylvania, on which the printing plant is located. Before his death, the Commander had spent many hours there, meeting local people and enjoying the rugged countryside. It seemed appropriate that this locale should be his final resting place.

Accordingly, the Party decided to follow local tradition and inter the Commander on its land there. A local funeral director offered to make final arrangements for the burial.

Final preparations were in progress when Headquarters was informed that certain groups, presumably the Jewish War Veterans, were moving to place injunctions against the planned burial.

At the same time, acting under Jewish pressure, Arlington County officials threatened to seize the Commander's remains.

Faced with the possibility of losing the Commander's remains and having them desecrated, the Party decided that cremation was the only alternative.

On August 30, the Commander's ashes were returned to Party Headquarters where a moving memorial service was conducted by Matt Koehl.

GEORGE LINCOLN ROCKWELL

National Socialist Comrades! Fellow White Americans! Today we take upon ourselves the sorrowful task of laying to rest the mortal remains of our beloved Commander, Lincoln Rockwell, martyred by the bullet of a cowardly assassin. To those of us who worked with him everyday, to those Party comrades all over America, and to dedicated National Socialists throughout the world the staggering loss imposed by his death will only be fully felt in the days and years of struggle which lie ahead of us all. His inspiration and his will, the depth of his wisdom and the heroism of his spirit--these are the things which gave us the motivation and the guidance we sorely needed to keep up the fight on so many dark days in years past.

The stunning suddenness of his departure and the ensuing turmoil of the last few days have kept us from yet assessing the magnitude of our loss. But even harder to bear than this perhaps, has been the utterly shabby--the despicably shameful--treatment of our fallen Commander by a government of the nation he served so faithfully throughout all the years of his manhood. George Lincoln Rockwell gave his life in the struggle against Bolshevism at a time when thousands of other American fighting men on the other side of the world are also falling victims to that same Bolshevism--and yet an American government has denied his request to be laid to rest in the place of his choice.

George Lincoln Rockwell served America for over twenty years and through two wars, risking his life again and again in defense of the land and the people he loved so well. He was no armchair soldier, but chose of his own will that soldierly profession demanding the very highest order of courage and skill: he was a fighter pilot. His dedication to duty, his daring, his proficiency led him from the rank of Seaman to that of Naval Commander, gave him the leadership of three fighter squadrons, and earned him nine decorations. And an American government does not hold him fit to be buried beside his fellow fighting men.

George Lincoln Rockwell has sacrificed more and fought harder for the things he held dear--his native land, his fellow countrymen, and, above all, his race--than any man now living. He saw his duty and unflinchingly did it, even when that duty led him into opposition to nearly all those around him. He saw further than other men, and he fought harder. Indeed, in this latter regard he cherished the maxim of the great Leader whose philosophy moulded his own thoughts: "Those who want to live, let them fight; and those who do not want to fight in this world of eternal struggle do not deserve to live."

He fought, and he died. And yet Lincoln Rockwell is not really dead, for he built a movement and he spread an idea, and that movement was not destroyed nor that idea silenced by the bullet that struck

him down. And so long as that movement remains and that idea continues to fill the hearts and minds of men, the spirit of Lincoln Rockwell lives on.

The ashes of the martyr lie here before us and we cannot help but be filled with a solemn sense of tragedy. Yet we are not really here to mourn him, but to honor him and to rededicate ourselves to the great Cause which he served. In the times ahead we must redouble our efforts, so that he will not have died in vain. We must let his great sacrifice serve to inspire us onward in our struggle toward victory--the victory of our people, of our great White race, over the disease which now afflicts it and the enemies who now oppress it. Indeed, at this moment we must bear in mind that old saying which the Commander paraphrased for us: "The stones and mortar of our movement are the bones and blood of its martyrs." It is this aspect of his death that he would now want us to keep uppermost in mind, forgetting our sorrow and filling ourselves with pride at the knowledge we followed such a leader.

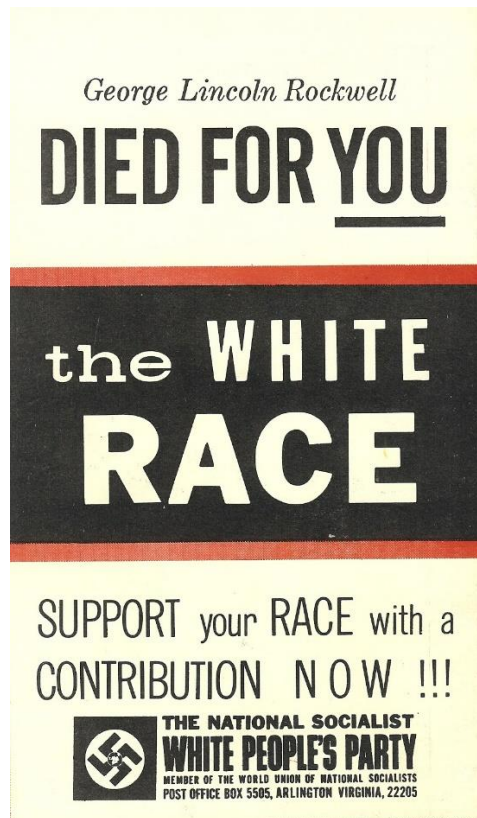
For it was he, Lincoln Rockwell, who again picked up the torch which fell to earth twenty-two years ago. Adolf Hitler founded our great movement and will forever fill a unique position in the sagas of our race; but had it not been for Lincoln Rockwell, Adolf Hitler's mighty work might well have been in vain. It was Lincoln Rockwell who set us once again on the upward path when we had faltered and wanted to go back again. It was his example which inspired us to do what we knew we should do rather than that which was easiest to do. It was his hand which led us out of the maze of defeat and degeneration and despair, and pointed the way toward higher things; and his voice which reminded us over and over again that we must continue the struggle for the future of our race.

As we lay to rest the mortal remains of Lincoln Rockwell, it is appropriate to read once again that passage from the Leader's book which he loved best. I shall read from chapter 12 of the first volume of the Commander's personal copy of Mein Kampf:

"When human hearts break and human souls despair, the great vanquishers of distress and care, of shame and misery, of intellectual unfreedom and physical duress look down upon them from the twilight of the past, and hold out their eternal hands to faint-hearted mortals. Woe to the people that is ashamed to grasp them!"

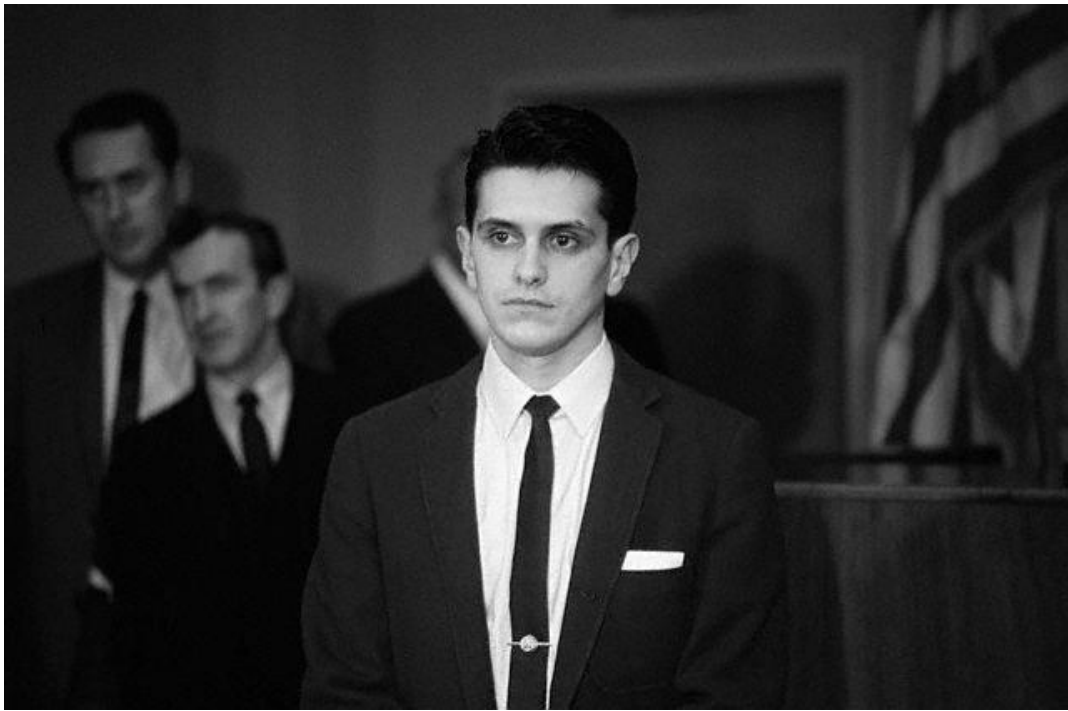


Eulogy delivered by
Matt Koehl in Arlington,
30 August 1967



NSWPP propaganda surrounding Rockwell's death.





November 27, 1967 – Patler v. Commonwealth of Virginia



February 8, 1968 – John Patler is reunited with his wife and children following release on bond pending the appeal of his guilty verdict.

Observances



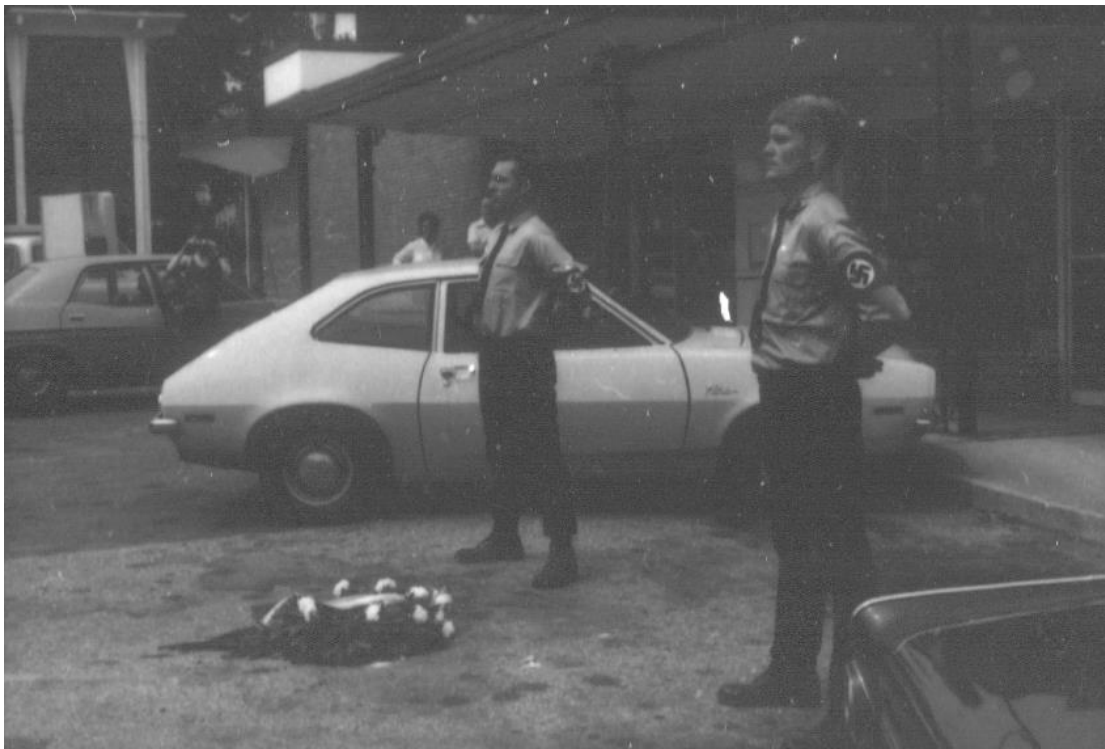
The NSWPP soon began to hold regular observances at the site of Rockwell's death.



1976 – Visiting adherents pay homage.



August 25, 1977 – Official NSWPP 10th Anniversary Ceremony



August 25, 1987 – 20th Anniversary of Rockwell's Death

In 1984, the NSWPP – greatly reduced in numbers from its membership pinnacle in the early 1970s – renamed itself the New Order and moved its headquarters from Arlington (VA) to New Berlin (WI). As a result, there was no official ceremony marking the 20th anniversary of Rockwell's death. An informal ceremony did occur late that evening, though. Several local activists placed a floral tribute on the swastika adorning the spot where Rockwell was struck down, said a few words in remembrance, and saluted him. No photographs were taken.



MARTIN KERR
Box 6744
Falls Church, Va. 22046

ACTIVITY REPORT

TO: Tom Metzger

FROM: Martin Kerr

ACTIVITY: Vigil for George Lincoln Rockwell & Other Martyrs

DATE: December 10, 1988

TIME: 12:00 a.m. through 6:40 a.m. (First Light)

PLACE: Lincoln Rockwell Assassination Site, Arlington, Va.

DESCRIPTION: Eleven White Nationalists from the Washington, D.C., area and Southern Virginia braved temperatures of 26° on the morning of December 10 to honor the sacrifice made by George Lincoln Rockwell, the Father of the modern-day racist movement and the Founder of American National Socialism. Homage was also paid to the other men and women who have given their lives in the struggle for the liberation of our Race. The vigil was conducted from midnight through the first light of morning, and included candle-lighting and discussions on a wide range of Movement topics. A strong sense of comradeship and revolutionary unity pervaded the gathering.

As the first rays of morning pierced the frozen darkness, the assembled comrades faced the rising Sun and laid an evergreen wreath bearing a Swastika at the exact spot where Lincoln Rockwell fell beneath the bullets of a cowardly Marxist sneak-murderer 21 years ago. The ceremony honoring this authentic American hero was brief but solemn.

MISCELLANEOUS INFORMATION: The vigil was jointly organized by Ron Doggett and Martin Kerr. Robert Hoy took photographs (which he will send separately). The police were notified beforehand, but other than two slow drive-bys by patrol cars, there was no contact during the vigil. There was no media coverage, as the press was not notified. A leaflet explaining who George Lincoln Rockwell was was produced by White Lightning for the occasion. (Sample copies are available on request from WHITE LIGHTNING ENTERPRISES, Box 6143, McLean, Va. 22106).

Submitted by:

A handwritten signature in cursive script, appearing to read "Martin Kerr".

Martin Kerr

December 10, 1988 – A dusk-to-dawn “Martyr’s Day” candlelight vigil was held at the site of Rockwell’s slaying.



December 1995 – Martyr's Day Vigil



December 1996 – Martyr's Day Vigil



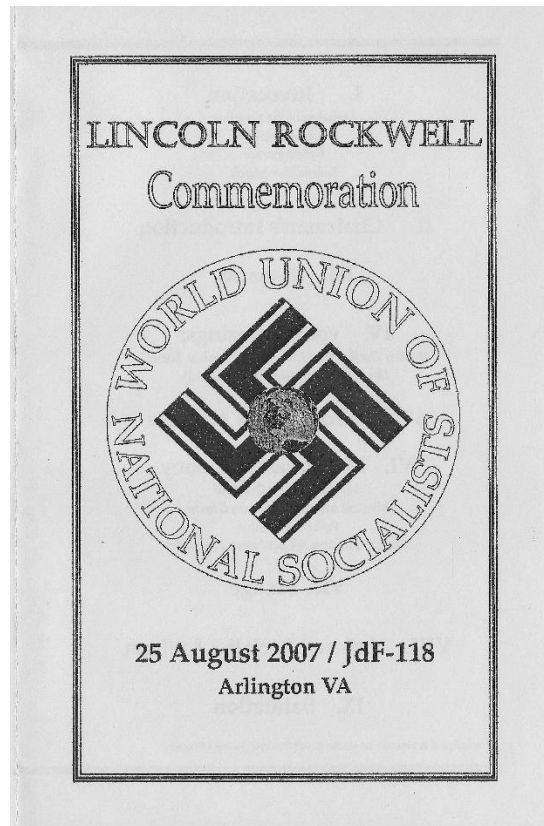
August 23, 1997 – Official New Order 30th Anniversary Ceremony





August 25, 2007 – Official New Order 40th Anniversary Daytime Ceremony





August 25, 2007 – Official New Order 40th Anniversary Evening Commemoration

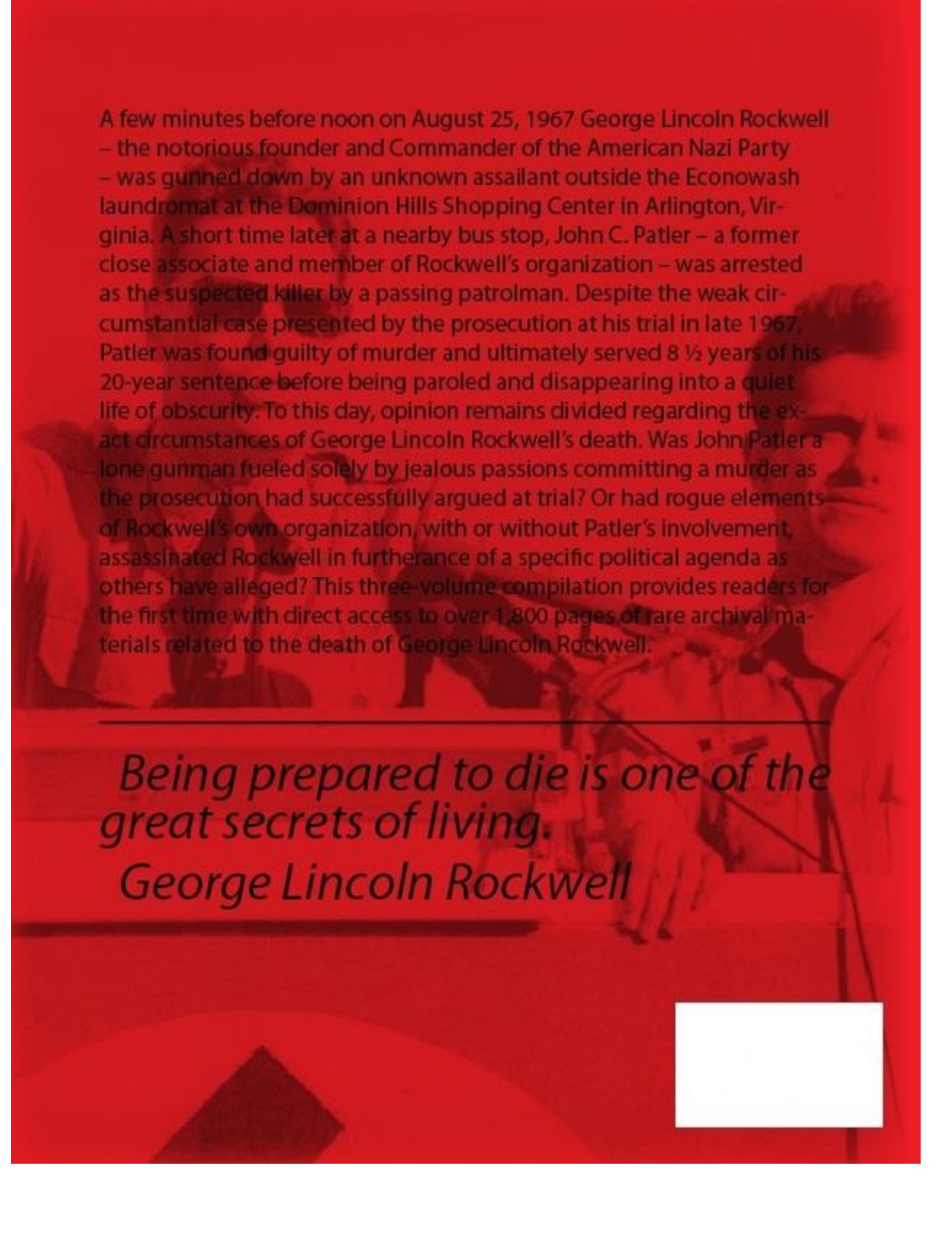




Late 2014 – Following the death of New Order Leader Matt Koehl, the rarely seen reliquary containing Rockwell's ashes was displayed while new safe storage was arranged for it.



August 25, 2017 – Official New Order 50th Anniversary Ceremony



A few minutes before noon on August 25, 1967 George Lincoln Rockwell – the notorious founder and Commander of the American Nazi Party – was gunned down by an unknown assailant outside the Econowash laundromat at the Dominion Hills Shopping Center in Arlington, Virginia. A short time later at a nearby bus stop, John C. Patler – a former close associate and member of Rockwell's organization – was arrested as the suspected killer by a passing patrolman. Despite the weak circumstantial case presented by the prosecution at his trial in late 1967, Patler was found guilty of murder and ultimately served 8 ½ years of his 20-year sentence before being paroled and disappearing into a quiet life of obscurity. To this day, opinion remains divided regarding the exact circumstances of George Lincoln Rockwell's death. Was John Patler a lone gunman fueled solely by jealous passions committing a murder as the prosecution had successfully argued at trial? Or had rogue elements of Rockwell's own organization, with or without Patler's involvement, assassinated Rockwell in furtherance of a specific political agenda as others have alleged? This three-volume compilation provides readers for the first time with direct access to over 1,800 pages of rare archival materials related to the death of George Lincoln Rockwell.

*Being prepared to die is one of the
great secrets of living.*
George Lincoln Rockwell

